

(23,313)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 738.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF
TEXAS, PLAINTIFF IN ERROR,

vs.

ROBERT ALEXANDER.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Judges of the District Court of the United States for the Southern District of New York, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the District Court, before you, or some of you, between Robert Alexander, plaintiff, and St. Louis Southwestern Railway Company of Texas, defendant, a manifest error hath happened, to the great damage of the said St. Louis Southwestern Railway Company of Texas as is said and appears by its complaint, We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, Do Command You, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the Supreme Court of the United States, at Washington, together with this writ, so that you have the same at the said place, before the Justices aforesaid, on the 27th day of July, 1912, that the record and proceedings aforesaid being inspected, the said Justices of the Supreme Court of the United States may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable George Holt, U. S. District Judge S. D. of New York, this 29th day of June, in the year of our Lord one thousand nine hundred and twelve, and of the Independence of the United States the one hundred and thirty-sixth.

[Seal District Court of the United States, Southern District of N. Y.]

[L. s.]

THOS. ALEXANDER,

*Clerk of the District Court of the United States of America
for the Southern District of New York, in the Second Circuit.*

The foregoing writ is hereby allowed.

June 29, 1912.

GEO. C. HOLT,

U. S. District Judge.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Thomas Alexander, Clerk of the District Court of the United States of America, for the Southern District of New York, in the Second Circuit, by virtue of the foregoing Writ of Error, and in obedience thereto, do hereby certify, that the following pages numbered from three to 96 inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the cause of St. Louis Southwestern Railway Company of Texas, Plain-

tiff in Error, against Robert Alexander, Defendant in Error, as the same remains of record and on file in said office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 26th day of July, in the year of our Lord one thousand nine hundred and twelve, and of the Independence of the United States the one hundred and thirty-seventh.

[Seal District Court of the United States, Southern District of N. Y.]

THOS. ALEXANDER, *Clerk.*

[Endorsed:] Law. 7/73. The Supreme Court of the United States. St. Louis Southwestern Railway Company of Texas, Plaintiff in Error, vs. Robert Alexander, Defendant in Error. Writ of Error. ———, Attorney for Plaintiff in Error. Due service of a copy of the within Writ of Error is hereby admitted this 1st day of July 1912. Phelan Beale, Attorney for Defendant in Error. U. S. District Court, S. D. of N. Y. Jul-1, 1912. M.

3

New York Supreme Court, County of New York.

ROBERT ALEXANDER, Plaintiff,
against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
Defendant.

To the above named defendant:

You are hereby summoned to answer the complaint in the above entitled action, and to serve a copy of your answer on the Plaintiff's Attorney, within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated New York, July 6th, 1911.

PHELAN BEALE,

Attorney for Plaintiff,

No. 2 Wall Street, New York City.

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New York Supreme Court, County of New York.

ROBERT ALEXANDER, Plaintiff,
against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Defendant.

The plaintiff herein through Phelan Beale, his attorney, complains of the defendant, and for a cause of action respectfully alleges to this Court:

First. That at all the times hereinafter mentioned the plaintiff

was and still is a resident of the State of New York and engaged in the County of New York, in the business of buying and selling poultry, game and other similar farm products.

Second. Upon information and belief that at all the times herein-after mentioned the defendant was and still is a foreign railroad corporation organized and existing under and by virtue of the laws of the State of Texas, and having an office in the City of New York.

Third. Upon information and belief that at all the times herein-after mentioned the defendant was and still is engaged in the business of a common carrier of goods, wares and merchandise for hire from, to and through various states of the United States and in particular from the City of Waco, State of Texas, to New York City, in part over the lines of its own railroads and ferries, and in part by means of the lines and ferries of connecting carriers.

Fourth. Upon information and belief that heretofore and on or about November 25th, 1910, the Texas Packing Company, a corporation of the State of Texas, doing business at the City of Waco, in the said State as merchants, delivered to the defendant at the said City of Waco, certain goods, to wit: One hundred and four (104) barrels of dressed poultry, all of first class quality and in the best condition and weighing about 26,473 pounds and of the worth and value of about Five thousand five hundred dollars (\$5,500) which said property on said 25th day of November, 1910, was carefully and properly loaded by said Texas Packing Company at said City of Waco, State of Texas, into a certain car known as "A. R. T. 10097", furnished to it for that purpose by the defendant herein, and which said car was at that time arranged, prepared and iced by the said Texas Packing Company in a careful, suitable and proper manner for the reception of said dressed poultry without injury or damage to the same, and thereupon the defendant by its agent at said City of Waco, thereunto duly authorized made and delivered to the said Texas Packing Company a certain bill of lading or transportation contract in writing, a copy of which is hereto annexed and marked Schedule "A," and which is hereby referred to and made part of this complaint, wherein defendant acknowledged that it had received from said Texas Packing Company one hundred and four (104) barrels of dressed poultry of about 26,473 pounds in weight and in consideration of a certain stipulated sum of money then and there paid and a certain stipulated sum of money thereafter to be paid by the said Texas Packing Company or consignee to the defendant herein as and for icing and freight charges, defendant agreed that it would transport and convey promptly and without loss, injury, damage and delay, the said poultry which it stated to be on board a certain car known as "A. R. T. 10097" from Waco aforesaid to the said City of New York, in the State of New York and during the course of transportation would keep the said dressed poultry properly iced and refrigerated for transportation to its said destination, and would there deliver the same to the order of the said Texas Packing Company after notice to this plaintiff.

That the said bill of lading or transportation contract was thereafter endorsed by the said Texas Packing Company in blank.

Fifth. On information and belief that on or about the 26th day of November, 1910, the said Texas Packing Company made its certain draft or bill of exchange in writing dated on that day and directed to this plaintiff at the said City of New York, whereby it requested the plaintiff to pay to the order of the Citizens National Bank, a banking corporation of said City of Waco, the sum of Four thousand seven hundred and fifty and 24/100 Dollars (\$4,750.24), and to charge the same to the account of the said Texas Packing Company and delivered said draft or bill of exchange with said bill of lading or transportation contract issued by the defendant its aforesaid and endorsed by said Texas Packing Company in blank as aforesaid thereto annexed, to said Citizens National Bank which thereupon credited to the said Texas Packing Company the amount of said draft or bill of exchange and became indebted to said Texas Packing — in the amount thereof and thereafter paid out the said amount on the drafts or checks of the said Texas Packing Company. That on the said endorsement and delivery of the said draft or bill of exchange as aforesaid the said Texas Packing Company pledged the said bill of lading or transportation contract and the merchandise described in it and therein admitted by the defendant to have been received by it as aforesaid as security for the payment of the amount of the said draft or bill of exchange. That at the time last aforesaid the plaintiff was not indebted to the said Texas Packing Company and had no funds of the said Texas Packing Company in its possession and that the draft or bill of exchange aforesaid was drawn against the value of said merchandise, to wit: One hundred and four barrels of dressed poultry of about 26,473 pounds in weight, specified in the said bill of lading or transportation contract hereinbefore referred to and therein acknowledged by the defendant to have been received by it for transportation promptly and to be re-iced and refrigerated during the course of transportation as aforesaid.

Sixth. That thereafter and on or about the 30th day of November, 1910, the said draft or bill of exchange duly endorsed by the said Citizens National Bank of Waco, and accompanied by and attached to the bill of lading or transportation contract hereinbefore mentioned, the said bill of lading or transportation contract being endorsed as aforesaid were duly presented to this plaintiff at the said City of New York by the Seaboard National Bank, a banking corporation in the said City of New York, which at that time was the endorsee thereof and was then entitled to collect the said draft or bill of exchange. That at the times last aforesaid this plaintiff was not indebted to said Texas Packing Company and had no moneys of said Texas Packing Company in his possession. That the said Seaboard National Bank held the said bill of lading upon the same pledge as that made with the Citizens National Bank of Waco and hereinbefore alleged, and refused to deliver the said bill of lading or transportation contract except upon payment of the said draft or bill of exchange. That thereupon on the day last afore-

said, and at the said City of New York, upon the presentation of the said draft or bill of exchange with the bill of lading or transportation contract hereinbefore referred to and endorsed as aforesaid annexed thereto, this plaintiff relying upon the said bill of lading or transportation contract and upon the truth of the statements therein contained that the merchandise referred to therein would be transported promptly and without loss, injury, damage and delay and that the car containing the same would be iced and re-iced and properly refrigerated during the course of transportation, accepted and paid the said draft or bill of exchange and paid to the said Seaboard National Bank the face of the said draft or bill of exchange, to wit: Four thousand seven hundred and fifty and 24/100 Dollars (\$4,750.24) of the plaintiff's money, and upon the said payment received the said draft and the said bill of lading or transportation contract from the said bank.

9 Seventh. On information and belief that the defendant herein failed, neglected and refused to perform its said covenants, contained in the said bill of lading or transportation contract, and to transport and cause to be transported said carload of dressed poultry promptly without loss, injury or damage or delay and to re-ice and refrigerate the said car as required, and to transport the said car of dressed poultry in good condition and without delay to the City of New York, State of New York, but, that on the contrary, the said defendant by its officers, servants, employees, agents and connecting carriers over whose lines the car passed, carelessly, negligently, wrongfully and tardily carried, handled and transported said car of dressed poultry and failed to re-ice and refrigerate the same according to its covenants and by reason of said wrongful acts and omissions and said carelessness, negligence and tardiness of said defendant, its officers, servants, employees and connecting carriers, as above set forth, the said carload of dressed poultry was not transported promptly and without delay and the poultry became and was damaged, injured and decayed when the said poultry arrived in the City of New York, State of New York, its destination, on the 5th day of December, 1910, and in consequence of its decayed condition caused by defendant, the plaintiff herein was unable to sell or dispose of it at a price equal to the then market value, owing to its then damaged and decayed condition caused by the defendant, its officers, servants, employees and connecting carriers.

10 Eighth. That by reason of the aforesaid negligence, damage, injury and depreciation, and without any fault or negligence on the part of the plaintiff herein, the said plaintiff was unable to sell the said dressed poultry for more than Three thousand and seventeen and 87/100 Dollars (\$3,017.87), and that in consequence and by reason of the above facts the plaintiff has suffered and sustained loss, injury and damage, to wit, a sum of money equivalent to the difference between the market value of the said poultry had it been in first class condition, and the amount actually realized, being a damage of Two thousand five hundred thirty-five and 02/100 Dollars (\$2,535.02), and in addition thereto, suffered a further damage of Four hundred three and 06/100

Dollars (\$403.06) paid out as and for icing and freight charges to the defendant herein under the said bill of lading or transportation contract.

Wherefore the plaintiff herein demands judgment against the defendant herein for the sum of Two thousand nine hundred thirty-eight and 08/100 Dollars (\$2,938.08), with interest thereof from the 5th day of December, 1910, together with the costs and disbursements of this action.

PHELAN BEALE,
Attorney for Plaintiff.

Office and Post Office Address, No. 2 Wall Street, New York City.

11 STATE OF NEW YORK,
 County of New York, ss:

Robert Alexander, being duly sworn, deposes and says that he is the plaintiff herein, that he has read the foregoing complaint and knows the contents thereof, that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

ROBERT ALEXANDER.

Sworn to before me this 29th day of June, 1911.

ROBERT M. RICHTER,
Notary Public, New York County.

(Here follows bill of lading, marked pages 12 and 13.)

4



(COPY)

Uniform Bill of Lading—Standard form of Order Bill of Lading approved by the Interstate Commerce Commission
by Order No. 87 of June 27, 1908.

Form 2128.
25M 12-08 PS

St. Louis Southwestern Railway Company-- OF TEXAS.

Shippers No.

ORDER BILL OF LADING—ORIGINAL.

Agents No.

"Exhibit A"

RECEIVED, subject to the classification of tariffs in effect, on the date of issue of this Original Bill of Lading,
Waco, Texas
November 25th, 1910.

19

at Texas Packing Co.

from the property described below in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER BILL of Lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless provided by law or unless permission is indorsed on this original bill of lading or given in writing by the shipper.

The Rate of Freight from

to is in Cents per 100 Lbs.

IF Through	IF 1st Class	IF 2d Class	IF 3rd Class	IF 4th Class	IF 5th Class	IF Class A	IF Class B	IF Class C	IF Class D	IF Class E	IF Special
											per

(Mail Address—Not for purpose of Delivery)

Consigned to ORDER OF Texas Packing Co.

Destination, New York

Notified Robert Alexander & Co.

State of N.Y. County of

IF Third Class	IF 1st Class	IF 2d Class	IF 3rd Class	IF 4th Class	IF 5th Class	IF Class A	IF Class B	IF Class C	IF Class D	IF Class E	Per
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(Mail Address—Not for purpose of Delivery)

Consigned to ORDER OF **Texas Packing Co.**

Destination, **New York**

State of **N.Y.** County of

Notify **Robert Alexander & Co.**

New York

State of **N. Y.** County of

At **Cotton Belt, Louisville, Ky.** State **Ky.** County of

Route, **East St. Louisville, Ky.** A.R.T. Car No. **10097**

NO. PACKAGES	DESCRIPTION OF ARTICLES AND SPECIAL MARKS	WEIGHT (Subject to Correction)	CLASS OR RATE	CHECK COLUMN	If charges are to be prepaid, write or stamp here, "To be Prepaid."
104	Bbls. Dressed Poultry	26473			
	Reice to full capacity with crushed ice, add twelve per cent salt at all icing stations				Received \$ to apply in Prepayment of the charges on the property described hereon.
	Racks furnished by shipper				Agent or Carrier.
	Iced at Waco to full capacity with twelve per cent salt				Per (The shipper's here acknowledges only the amount prepaid.)
					Icing Charges Advanced: \$ 19.30

Texas Packing Co

Shipper.

Sgd. C. B. Porter

Agent.

V. K. Besonette

Per

R

(This Bill of Lading is to be signed by the Shipper and Agent of the carrier issuing same.)

12 Per 730

14 New York Supreme Court, County of New York.

ROBERT ALEXANDER, Plaintiff,
against
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, De-
fendant.

Petition for Removal Into the Circuit Court of the United States.

The petitioner, St. Louis Southwestern Railway Company of Texas, in the above-entitled action respectfully shows to the Court—

First. That on or about the 10th day of July, 1911, the above-named plaintiff began this action by attempting to serve on your petitioner a summons and complaint therein by the delivery of a copy of the same, within the County of New York, to Lawrence Greer, a director of the defendant Company.

Second. That said action is of a civil nature, in which there is a controversy wholly between citizens of different states and in which the matter in dispute, exclusive of interest and costs, exceeds the sum of Two Thousand (\$2,000) Dollars.

15 Third. That said St. Louis Southwestern Railway Company of Texas, the defendant herein, is incorporated under the laws of the State of Texas, is a resident and citizen of said State, and is not a resident and citizen of the State of New York.

Fourth. That said Robert Alexander, the plaintiff herein, is a resident of the City and County of New York, in the Southern District of New York, and is a citizen of the State of New York.

Fifth. That said Robert Alexander is the sole plaintiff and that said St. Louis Southwestern Railway Company of Texas is the sole defendant in this action.

Sixth. That this action is in substance an action for money claimed to be due and owing by your petitioner in the amount of Two Thousand Nine Hundred and Thirty-eight Dollars and eight cents (\$2,938.08) together with interest from the 5th day of December, 1910.

Seventh. That it is alleged in said complaint that on or about the 25th day of November, 1910, the Texas Packing Company, a corporation of the State of Texas, doing business in the City of Waco, in said State, delivered to the defendant, at the City of Waco, State of Texas, certain goods, to wit, one hundred and four (104) barrels of dressed poultry, weighing about twenty-six thousand four hundred and seventy-three pounds (26,473 lbs.) and valued at about Five Thousand Five Hundred (\$5,500) Dollars. That the defendant thereupon, by its duly authorized agent at the City of Waco, State

16 of Texas, delivered to the Texas Packing Company a certain order bill of lading wherein the defendant Company acknowledged the receipt from the Texas Packing Company of the above-mentioned goods and agreed to transport said goods to the City of New York and there deliver the same to the order of the Texas Packing Company, after notice to Robert Alexander & Co.,

and that said bill of lading was thereafter endorsed in blank by the Texas Packing Company.

It is further alleged in said complaint that on or about the 26th day of November, 1910, the Texas Packing Company made its certain draft on the plaintiff whereby it requested the plaintiff to pay to the order of the Citizens' National Bank of Waco, Texas, the sum of Four Thousand Seven Hundred and Fifty Dollars and twenty-four cents (\$4,750.24) and charge the same to the account of the Texas Packing Company, and delivered the draft, together with the bill of lading, to the Citizens' National Bank of Waco, Texas, which bank thereupon credited the Texas Packing Company with the face amount of said draft.

It is further alleged in said complaint that on or about the 30th day of November, 1910, the said draft, duly endorsed by the Citizens' National Bank of Waco, Texas, accompanied by and attached to the said bill of lading, was presented to the plaintiff at the City of New York by the Seaboard National Bank, a banking corporation in the city of New York, which at the time was the endorsee of said draft, duly entitled to collect the same; that on the 30th day of November, 1910, the plaintiff accepted the said draft and paid to the Seaboard National Bank the face amount thereof—to wit, Four Thousand Seven Hundred and Fifty Dollars and twenty-four cents (\$4,750.24)—and received from the bank the draft and the bill of lading.

It is further alleged in said complaint that the defendant Company carelessly, negligently, wrongfully and tardily held and transported said goods and failed to re-ice and refrigerate the same, according to its covenants, and that also, by reason of the failure of the defendant Company to transport the same without delay, the dressed poultry became and was damaged, injured and decayed on its arrival at the City of New York, its destination, and that in consequence thereof the plaintiff was unable to dispose of said goods at a price equal to the then market value thereof; that the plaintiff was unable to sell the dressed poultry for more than Three Thousand and Seventeen Dollars and eighty-seven cents (\$3,017.87) and that the plaintiff has been damaged to an amount equal to the difference between the market value of said poultry had it been in first-class condition and the amount actually realized,—an alleged damage of \$2,535.02; that in addition thereto the plaintiff suffered a further damage of Four Hundred and Three Dollars and six cents (\$403.06) paid to the defendant for icing and freight charges under the terms of the bill of lading, making a total of Two Thousand Nine Hundred and Thirty-eight Dollars and eight cents (\$2,938.08), for which amount plaintiff demands judgment.

Eighth. That your petitioner disputes said claim and denies its liability therefor.

Ninth. That no special bail was or is required in said action.

18 Tenth. That this petition is made and filed before this petitioner is required by the laws of the State of New York or the rules of this Court to answer or plead to said complaint.

Eleventh. That it is desired by your petitioner, the defendant

herein, to remove said cause from this Court to the Circuit Court of the United States for the Southern District of New York, in accordance with the provisions of the Acts of Congress of the United States in that behalf made and provided.

Twelfth. That your petitioner makes and files herewith a bond, with good and sufficient surety, as required by the Acts of Congress in that behalf made and provided, in the penal sum of Five Hundred (\$500) Dollars, conditioned on its entering in the Circuit Court of the United States for the Southern District of New York, on the first day of its next session, a copy of the record in this suit, and its paying all costs that may be awarded in said Circuit Court of the United States for the Southern District of New York if said Court shall hold that this suit was wrongfully or improperly removed thereto.

Wherefore your petitioner prays that said bond may be accepted as good and sufficient, and that this Honorable Court will make its order for the removal of this suit into the Circuit Court of the United States to be held in and for the Southern District of New York, in which District this suit is pending, pursuant to the Acts of Congress in such case made and provided, and will cause the record herein to be removed into said Circuit Court of the United States in
19 and for the Southern District of New York, and that no other or further proceedings may be had in said cause, in this Court.

And your petitioner will ever pray.

PIERCE & GREER,

*Attorneys for the Defendant, St. Louis Southwestern
Railway Company of Texas.*

Office & P. O. Address: No. 120 Broadway, Borough of Manhattan,
City and State of New York.

20 STATE OF NEW YORK,
County of New York, ss:

Lawrence Greer, being duly sworn, deposes and says: That he is a member of the firm of Pierce & Greer, attorneys herein for the petitioner; that he has read the foregoing petition and knows the contents thereof, that the same is true of his own knowledge except as to those matters therein stated to be alleged on information and belief and as to those matters he believes it to be true, and that the reason why this verification is not made by the defendant is that the said defendant is a foreign corporation.

LAWRENCE GREER.

Subscribed and sworn to before me this 24th day of July, 1911.

WALTER H. SMITH,
Notary Public, New York County.

Supreme Court, New York County.

ROBERT ALEXANDER, Plaintiff,

against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
Defendant.*Bond on Removal.*

Know all Men by these Presents:

That we, St. Louis Southwestern Railway Company of Texas, principal, and the Fidelity and Deposit Company of Maryland, having an office and principal place of business for the State of New York, at No. 2 Rector Street, in the Borough of Manhattan, in the City of New York, surety, are held and firmly bound unto Robert Alexander in the sum of five hundred (\$500) dollars, lawful money of the United States, to be paid to the said Robert Alexander his heirs, executors and administrators for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the Twentieth of July, 1911.

Upon Condition, nevertheless that whereas, the said St. Louis Southwestern Company of Texas has filed a petition in the Supreme Court, New York County for the removal of a certain cause therein pending between the said Robert Alexander as plaintiff and the said St. Louis Southwestern Railway Company of Texas as defendant, to the Circuit Court of the United States, in and for the Southern District of New York;

Now, if the said St. Louis Southwestern Railway Co. of Texas shall enter in the said Circuit Court of the United States on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said Circuit Court of the United States, if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in full force and virtue.

ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY OF TEXAS.FIDELITY AND DEPOSIT COMPANY OF
MARYLAND,By CHARLES V. R. MARSH, *Attorney in Fact.*
Attorney in Fact.

Attest:

[SEAL.]

JAMES R. KINGSLEY, *Attorney.*

At a regular and lawful meeting of the Board of Directors of the Fidelity and Deposit Company of Maryland, at which a quorum was present, held at the office of the Company, in the City of Baltimore, State of Maryland, on the third day of June, A. D. 1908, on motion, it was unanimously adopted, to wit:

"Resolved, That Henry B. Platt, Vice-President, or James R. Kingsley, Attorney, or Frank H. Platt, Edward T. Platt, Joseph A. Flynn, Hugh M. Allwood, and Charles V. R. Marsh, Attorneys-in-Fact of this Company, in the State of New York, be, and each of them is, hereby authorized and empowered to execute and deliver any and all bonds or undertakings for or on behalf of this Company, in its business of guaranteeing the fidelity of persons holding places of public or private trust, and the performance of contracts other than insurance policies, and executing or guaranteeing bonds and other undertakings required or permitted in all actions or proceedings, or by law required, and to attach thereto the seal of the Company, the same to be attested by the said James R. Kingsley, Attorney of the Company, or by either one of the other persons above named, as occasion may require."

22 COUNTY OF NEW YORK, ss:

I, James R. Kingsley, Attorney of the Fidelity and Deposit Company of Maryland, have compared the foregoing Resolution with the original thereof as recorded in the Minute Book of said Company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of said original Resolution.

Given under my hand, and the Seal of the Company, at the City of New York, this 20th day of July, 1911.

[SEAL.]

JAMES R. KINGSLEY,
Attorney.

STATE OF NEW YORK,
County of New York, ss:

On this 20th day of July, in the year 1911, before me personally came Charles V. R. Marsh to me known, who, being by me duly sworn, did depose and say, that he resided in the City of New York; that he was the Attorney-in-fact of the Fidelity and Deposit Company of Maryland, the corporation named in and which executed the within instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order. And the said Charles V. R. Marsh further said that he was acquainted with James R. Kingsley and knew him to be the attorney of said Company; that the signature of the said James R. Kingsley subscribed to the said instrument, was in the genuine handwriting of the said James R. Kingsley and was thereto subscribed by the like order of the said Board of Directors, and in the presence of him, the said Charles V. R. Marsh.

[SEAL.]

ERNEST L. HICKS,
Notary Public, New York County, No. 57.

[Endorsed:] Supreme Court, New York County. Robert Alexander, Plaintiff, against St. Louis Southwestern Railway Company of Texas, Defendant. Copy. Bond on Removal. Surety. Fidelity and Deposit Company of Maryland.

STATE OF NEW YORK,
County of New York, ss:

I, William F. Schneider, Clerk of the said County, and Clerk of the Supreme Court of said State for said County, Do Certify, That I have compared the preceding with the original Record on Removal U. S. Court, Robert Alexander vs. St. Louis, Southwestern Railroad Company of Texas, Filed July 24, 1911, on file in my office and that the same is a correct transcript therefrom, and the whole of such original.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal, this 25th day of July, 1911.

[SEAL.]

WM. F. SCHNEIDER, Clerk.

[Endorsed:] U. S. Circuit Court, Southern District N. Y., Filed Aug. 4, 1911, John A. Shields, Clerk.

(Copy.)

In the Circuit Court of the United States for the Southern District of New York.

ROBERT ALEXANDER, Plaintiff,
against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Defendant.

Notice of Motion to Vacate and Quash Service of Summons and to Dismiss for Want of Jurisdiction over Defendant.

SIR: Please take Notice that St. Louis Southwestern Railway Company of Texas, named as defendant in the above-entitled cause, appearing specially for the purpose of the annexed motion, and not otherwise, will, upon the annexed affidavits of F. H. Britton, Esq., and Lawrence Greer, Esq., verified respectively on the 25th day of July and the 4th day of August, 1911, and upon the record herein, bring said motion on for hearing at a term of the Circuit Court of the United States for the Southern District of New York, to be held in the Post Office Building in the Borough of Manhattan, City and State of New York, in the Southern District of New York, on the 16th day of August, 1911, at the opening of court on that day or as soon thereafter as counsel can be heard, and will apply to

25 said Court for an order vacating and quashing the attempted service of summons in this cause upon said defendant and dismissing the said cause for want of jurisdiction over said defendant, on the ground that said defendant is a foreign corporation organized and existing under the laws of the State of Texas, is not doing business within the State of New York, is not found within said State and is not amenable to service therein, and has not waived

due service of summons in this cause by voluntary appearance or otherwise.

Dated New York, August 4, 1911.

Yours &c.,

PIERCE & GREER,
Attorneys for Defendant, St. Louis Southwestern Railway Company of Texas, Appearing Specially for the Purpose of Moving to Vacate and Quash the Service of Summons Herein and to Dismiss This Action for Want of Jurisdiction over Said Defendant, and Appearing for No other Purpose.

Office & P. O. Address: No. 120 Broadway, Borough of Manhattan, City and State of New York.

To Phelan Beale, Esq., Attorney for Plaintiff, No. 2 Wall Street, City of New York.

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(Copy.)

In the Circuit Court of the United States for the Southern District of New York.

ROBERT ALEXANDER, Plaintiff,
against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Defendant.

Motion to Vacate and Quash Service of Summons and to Dismiss for Want of Jurisdiction over Defendant.

To the Honorable the Judges of the Circuit Court of the United States for the Southern District of New York:

St. Louis Southwestern Railway Company of Texas, named as defendant in the above-entitled cause, appears specially for the purpose hereinafter stated, and for no other purpose, and hereby moves the Court to vacate and quash the attempted service of summons in this cause upon said named defendant, made by delivery of same to Lawrence Greer as a director of said St. Louis Southwestern Railway Company of Texas, and to dismiss this cause for want of jurisdiction over the person of said St. Louis Southwestern Railway Company of Texas, for the reason that said St. Louis Southwestern Railway Company of Texas is a foreign corporation organized and existing under the laws of the State of Texas, is not doing business within the State of New York, is not found within said State and is not amenable to service therein, and has not

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waived due service of summons herein by voluntary appearance or otherwise.

Dated New York, August 4, 1911.

PIERCE & GREER,

Attorneys for Defendant, St. Louis Southwestern Railway Company of Texas, Appearing Specially for the Purpose of Moving to Vacate and Quash the Service of Summons Herein and to Dismiss This Action for Want of Jurisdiction over Said Defendant, and Appearing for No other Purpose.

Office & P. O. Address: No. 120 Broadway, Borough of Manhattan, City and State of New York.

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(Copy.)

In the Circuit Court of the United States for the Southern District of New York.

ROBERT ALEXANDER, Plaintiff,
against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Defendant.

Affidavit of F. H. Britton in Support of Motion to Quash Service of Process.

STATE OF MISSOURI,

City of St. Louis, ss:

F. H. BRITTON, being duly sworn, deposes and says:

First. That he is the president of St. Louis Southwestern Railway Company of Texas, the defendant in the above-entitled cause.

Second. That St. Louis Southwestern Railway Company of Texas is a corporation duly organized and existing under the laws of the State of Texas, with its principal place of business located in the City of Tyler, in said State.

Third. That said defendant is a railroad corporation owning and operating lines of railway all of which are located within the
29 State of Texas. That no substantial part of the corporate business of said defendant is transacted outside the State of Texas, excepting insofar as such business may be incidental to the use and operation of its lines of railway in interstate commerce, as parts of through routes for the transportation of passengers and freight.

Fourth. That no part of the property of said defendant is located in the State of New York (excepting such of its rolling stock as may be temporarily there, under the control of other carriers). That it has no bank account in the State of New York. That it maintains no office and employs no agents within the State of New York. That none of its officers is located or resides within the State

of New York. That no part of its corporate business is transacted within the State of New York and it is not engaged in business therein. That there is annexed hereto and made a part hereof, marked Exhibit "A", an official publication designated as Official List No. 46, containing the names, locations and places of residence of the officers and agents of the defendant, which publication affiant believes, and avers upon information and belief, to be correct.

Fifth. That a majority of the members of the board of directors of said defendant reside within the State of Texas. That all of the important meetings of the directors of said defendant are held within the State of Texas, and no meeting of said board (if any at all) has been held within the State of New York for many years. That Mr.

30 W. H. Taylor and Mr. Lawrence Greer (each, as affiant is informed and believes, a resident of the State of New York) are members of the board of directors of said defendant. That neither of said directors is an official representative of said defendant within the State of New York.

Sixth. That said defendant has designated no agent within the State of New York upon whom process may be served, and has authorized no one to accept service of process on its behalf, or otherwise represent it therein.

And further affiant saith not.

F. H. BRITTON,

Sworn to before me this 25th day of July, 1911.

[NOTARIAL SEAL.]

ELIZABETH C. KNESELY,

Notary Public.

My Commission expires May 18, 1915.

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Copy.

In the Circuit Court of the United States for the Southern District of New York.

ROBERT ALEXANDER, Plaintiff,
against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Defendant.

Affidavit of Lawrence Greer in Support of Motion to Quash Service of Process.

STATE OF NEW YORK,

County of New York, ss:

LAWRENCE GREER, being duly sworn, deposes and says:

First. That he is a director of St. Louis Southwestern Railway Company of Texas, the defendant in the above-entitled cause.

Second. That on or about the 10th day of July, 1911, a copy of a summons and complaint in the above-entitled cause was delivered to him at his office, No. 120 Broadway, in the Borough of Manhattan, City and State of New York, and within the Southern

District of New York, it being stated by the person so delivering said summons and complaint to the affiant that the same was served upon him as a director of St. Louis Southwestern Railway Company of Texas.

32 Third. That a majority of the members of the board of directors of St. Louis Southwestern Railway Company of Texas reside within the State of Texas; that all of the important meetings of said board of directors of said Company are held within the State of Texas; and that no meeting of said board of directors has been held within the State of New York since the affiant became a member of said board.

Fourth. That the affiant is not an official representative of said Company within the State of New York, and has not been authorized by said Company to receive and accept service of process on its behalf.

And further affiant saith not.

LAWRENCE GREER.

Subscribed and sworn to before me this 4th day of August, 1911.

[NOTARIAL SEAL.]

L. ELWELL,

Notary Public, New York County.

My commission expires March 30, 1913.

33 In the Circuit Court of the United States for the Southern District of New York.

ROBERT ALEXANDER, Plaintiff,
against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Defendant.

Affidavit.

STATE OF NEW YORK,
County of New York, as:

ARTHUR J. TRUSSELL, being duly sworn, deposes and says:

First. That he is the Secretary of St. Louis Southwestern Railway Company, a corporation organized and existing under the laws of the State of Missouri, with an office at No. 165 Broadway, in the Borough of Manhattan, City and State of New York.

Second. That he has been informed by counsel for St. Louis Southwestern Railway Company of Texas, in an action brought against that company by Robert Alexander, that counsel for said Alexander, at a hearing in the Circuit Court of the United States for the Southern District of New York, on a motion to vacate and

34 quash service of summons and to dismiss for want of jurisdiction over the defendant, on the 16th day of August, 1911, alleged, on information and belief, that said St. Louis Southwestern Railway Company of Texas had an office for the transfer of stock in the City of New York at the office maintained as aforesaid

by said St. Louis Southwestern Railway Company at No. 165 Broadway, Borough of Manhattan, City of New York.

Third. That there is no such office for the transfer of stock of said St. Louis Southwestern Railway Company of Texas at said office of said St. Louis Southwestern Railway Company at No. 165 Broadway, Borough of Manhattan, City of New York, nor at any office of said St. Louis Southwestern Railway Company in the State of New York.

Fourth. That he is not an officer of said St. Louis Southwestern Railway Company of Texas, nor is he authorized to transfer the stock of said company, nor does he know of any person within said State of New York who is authorized to transfer such stock within the State of New York.

ARTHUR J. TRUSSELL.

Subscribed and sworn to before me this 16th day of August, 1911.

H. L. UTTER,
Notary Public, Kings County.

Certif. Filed in N. Y. County.

35 In the Circuit Court of the United States for the Southern District of New York.

ROBERT ALEXANDER, Plaintiff,
against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
Defendant.

To the Honorable the Judges of the Circuit Court of the United States for the Southern District of New York:

STATE OF NEW YORK,
County of New York, ss:

PHELAN BEALE, being duly sworn, deposes and says:

I am an attorney at law with offices at 2 Wall Street in the Borough of Manhattan, City, County and State of New York, and the attorney of record for the plaintiff herein.

Nature of the Action Herein.

This is a legal action as distinguished from an equitable cause arising as follows: On or about the 25th day of November, 1910, the Texas Packing Company, a corporation organized and existing under and by virtue of the laws of the State of Texas, delivered to the defendant herein for shipment to the plaintiff in the City of New York, 104 barrels of dressed poultry of the reasonable and market value of Five thousand five hundred dollars (\$5,500), and received therefor a receipt or bill of lading signed by an agent of the said defendant herein, a copy of which receipt or bill of lading is attached

to the complaint herein. By the terms of the said receipt, or bill of lading, the defendant covenanted to transport said dressed poultry to the City of New York and to deliver the same in the said City of New York without damage or delay and to properly refrigerate and ice the said dressed poultry according to the terms of the said receipt or bill of lading. Thereafter and to wit, on the 5th day of December, 1910, the said dressed poultry was delivered to the plaintiff herein at the City of New York in the County and State of New York by the New York Central Lines as connecting carriers of the defendant herein, but by reason of the wrongful, negligent, careless and improper transportation of the said dressed poultry on the part of the defendant and the failure on the part of the defendant to re-ice and refrigerate the same according to its covenant in the said receipt or bill of lading, and by reason for the failure on the part of the said defendant to transport the same without delay, the said dressed poultry became and was damaged, injured and decayed when the said dressed poultry arrived in the City of New York, its destination. In consequence thereof, the said plaintiff was unable to dispose of the said goods at a price equal to the reasonable and market value thereof, being unable to sell the same for more than Three thousand seventeen and 87/100 Dollars (\$3,017.87). And the said plaintiff was damaged to an amount equal to the difference between the reasonable and market value of the said poultry, had it been in first class condition, and the amount actually realized, that is to say, a damage of Two thousand five hundred and thirty-five and 02/100 Dollars (\$2,535.02). In addition thereto the plaintiff suffered a further damage of Four hundred and three and 06/100 Dollars (\$403.06), paid to the defendant herein for icing and freight charges under the terms of the said bill of lading, making a total of Two thousand nine hundred and thirty-eight and 08/100 Dollars (\$2,938.08), for which amount the said plaintiff demands judgment in the complaint herein.

Present Status of the Action Herein.

On the 10th day of July, 1911, the within action was duly begun by the service of a summons issued out of the Supreme Court of the State of New York with a verified complaint attached thereto, personally on the above named St. Louis Southwestern Railway Company of Texas, the defendant herein, by delivering a copy thereof to Lawrence Greer of the City, County and State of New York, personally, and leaving the same with him at Number 120 Broadway, in the City, County and State of New York, as more fully appears by the affidavit of Pierre J. Grilliere, a copy of which is hereto annexed and made a part hereof and marked "Exhibit A." As appears more fully by the said "Exhibit A", the said Lawrence Greer was at that time a director of the said St. Louis Southwestern Railway Company of Texas, and the deponent knew the corporation so served to be the corporation named and described in the said complaint.

No person had been designated by the said corporation under Section 432, Sub Division 2 of the Code of Civil Procedure in and

for the State of New York, upon whom service of process might be made as appears by copies of telegrams duly sent and received by me to and from the Secretary of State of the State of New York, which said telegrams are incorporated in the affidavit of Pierre J. Grilliere herein above referred to. None of the officers under Section 432, Sub Division 1, of the Code of Code of Civil Procedure, in and for the State of New York, were at that time residents of the State of New York. The president of the said defendant, Mr. F. H. Britton, is a resident of St. Louis, Missouri, Mr. W. N. Neff, First Vice-President, is a resident of Tyler, Texas, Mr. H. E. Farrell, Second Vice-President, is a resident of St. Louis, Missouri, Mr. R. D. Cobb, Secretary, is a resident of Tyler, Texas, and Mr. W. J. Hogan, Treasurer, is a resident of Tyler, Texas. The said corporation has neither an assistant secretary nor an assistant treasurer. As appears more fully by the affidavit of the said Pierre J. Grilliere, "Exhibit A", due and diligent search was made for one of these said officers within the jurisdiction of the State of New York in accordance with the said Code provisions, but he was unable to find any one of the said officers within the said State of New York, and thereupon he made service upon Mr. Greer as a director of the

38 said defendant herein under and by virtue of the authority of Section 432, Sub Division 3, of the Code of Civil Procedure in and for the State of New York.

Thereafter, on the 24th day of July, 1911, the defendant herein filed a petition and bond which said bond was approved by Mr. Justice L. Giegrich, one of the Justices of the Supreme Court of the State of New York, petitioning the said Supreme Court of the State of New York to make an order for the removal of this cause from the said Supreme Court of the State of New York to the Circuit Court of the United States to be held in and for the Southern District of New York, in which district this suit was then pending, pursuant to acts of Congress in such case made and provided. Thereafter a transcript of the record in this cause was filed in the said Circuit Court of the United States for the Southern District of New York on or about the 4th day of August, 1911.

Thereafter on the 4th day of August, 1911, the attorneys for the defendant herein served upon me a copy of a notice of motion to vacate and quash the service of the summons herein and to dismiss the same for want of jurisdiction over the defendant, to which said motion were attached two affidavits in support of the said motion, one made by Mr. F. H. Britton, the president of the defendant herein and the other made by Mr. Lawrence Greer, one of the directors of the said defendant and the person upon whom service of the summons had been made.

In the affidavit of Mr. F. H. Britton herein above referred to, the deponent therein states that he is the president of the St. Louis Southwestern Railway Company of Texas and that the St. Louis Southwestern Railway Company of Texas is a corporation duly organized and existing under the laws of the State of Texas, with its principal place of business located in the City of Tyler in said State. That the defendant herein is a railroad corporation owning

and operating lines of railway, all of which located within the State of Texas, and that no substantial part of the business
39 of said defendant is transacted outside of the State of Texas, excepting in so far as such business may be incidental to the use and operation of its lines of railway in interstate commerce as parts of through routes for the transportation of passengers and freight. That no part of the property of such defendant is located in the State of New York, (except such of its rolling stock as may be temporarily there under the control of other carriers). That it has no bank account in the State of New York; that it maintains no office and employs no agents therein; that none of its officers are located or reside within the said state; that no part of its corporate business is transacted within the state; that a majority of the members of the Board of Directors of the said corporation reside within the State of Texas; That no meeting of the said Board has been held within the State of New York; that Mr. Greer and Mr. W. H. Taylor are residents of the state of New York, and that neither of said directors is an official representative of said defendant within the State of New York, and that the said defendant has designated no agent within the State of New York upon whom process may be served and has authorized no one to accept service of process upon its behalf or otherwise represent it in the said State.

The affidavit of Mr. Lawrence Greer, attached to the said notice of motion, stated that he is a director of the defendant herein. That a copy of the summons and complaint herein were delivered to him, as a director of the defendant herein, on the 10th day of July, 1911, at 120 Broadway, in the Borough of Manhattan, City, County and State of New York. That a majority of the members of the Board of Directors of the St. Louis Southwestern Railway Company of Texas resides within the State of Texas and that no meeting of the said Board of Directors had been held within the State of New York and that the said Lawrence Greer is not an official representative of the said defendant within the State of New York
40 and is not authorized by the defendant herein to receive service of process on its behalf.

The defendant is doing business in the State of New York through and by means of duly authorized agents.

In reply to the said affidavits, I deny the statement in the affidavit of Mr. F. H. Britton in which he says that no "substantial part of the corporate business of said defendant is transacted outside of the State of Texas, excepting in so far as such business may be incidental to the use and operation of its lines of railway in interstate commerce with parts of through routes for the transportation of passengers and freight. That no part of the property of said defendant is located in the State of New York, except such of its rolling stock as may be temporarily there under control of other carriers. —That it maintains no office and employs no agents within the State of New York—that no part of its corporate business is transacted within the State of New York and it is not engaged in any business there."

I am informed and believe that the St. Louis Southwestern Rail-

way Company, a corporation organized and existing under the laws of the State of Missouri, maintaining an office at 165 Broadway, in the Borough of Manhattan, City, County and State of New York, for the transaction of business, is the duly qualified and authorized agent of the defendant herein and that all of the agents of the St. Louis Southwestern Railway Company are the duly qualified authorized agents of the St. Louis Southwestern Railway Company of Texas.

The sources of my information and the grounds for my belief are statements made in the annual report and other literature of the said St. Louis Southwestern Railway Company, and in the annual report of the St. Louis Southwestern Railway Company of Texas, the defendant herein, by statements made by agents and employees of

the said St. Louis Southwestern Railway Company, by statements made by the transfer agent of the stock of the said St. 41 Louis Southwestern Railway Company of Texas, and by statements appearing in Poor's Manual of Railroads for the year 1910, which are founded upon statements made to the New York Stock Exchange in applications praying that the stocks and bonds of the St. Louis Southwestern Railway Company and of the St. Louis Southwestern Railway Company of Texas be listed thereon, and to the Poor's Railroad Manual by which said statements were made by officers and agents of the St. Louis Southwestern Railway Company and of the St. Louis Southwestern Railway Company of Texas.

These sources of my information and grounds of my belief are as follows:

"Official List No. 46" attached to defendant's notice of motion herein shows that the St. Louis Southwestern Railway Company and the St. Louis Southwestern Railway Company of Texas are one railroad, and the general officers and agents of one company are the general officers and agents of the other.

Attached to the notice of motion to vacate and quash the service of the summons and to dismiss the same for want of jurisdiction over the defendant as "Exhibit A" therein, made by the defendant herein, is what is known as "official List No. 46" of the official stations, agents and other information compiled by the Accounting Department of the St. Louis Southwestern Railway Company and the St. Louis Southwestern Railway Company of Texas. It is to be noted that the names of the two corporations, the St. Louis Southwestern Railway Company and the St. Louis Southwestern Railway Company of Texas are bracketted together and show, like a mathematical equation, that the two corporations are equivalent to the "Cotton Belt Route," and that the two corporations comprise one system.

None but bona fide inhabitants of the State of Texas are permitted under the laws of the said state to hold real property therein and it is a most significant fact that the division of the "Cotton Belt 42 Route" which lies within the State of Texas only, beginning at a point known as Texarkana, which is situated on the dividing line between Arkansas and Texas and extending thence south and southwest in the State of Texas.

The mileage of the St. Louis Southwestern Railway Company

comprises 634.8 miles, while the mileage of the St. Louis Southwestern Railway Company of Texas is greater, comprising 696.8 miles.

It is to be noted that in the said "Official List" above referred to, is a map showing the route of the said system, which said map shows no distinction whatsoever between the trackage routes of the St. Louis Southwestern Railway Company of Missouri and the St. Louis Southwestern Railway Company of Texas. The "Cotton Belt" combines a route running from St. Louis, Missouri, through the states of Illinois, Missouri, Tennessee, Arkansas and Louisiana into Texas, with nearly one-half of its mileage in the said State of Texas. This public notice and holding out that the entire system is unified and under one head and management is apparent as shown by all of the stationery, time-tables, catalogues and other official literature issued jointly by both corporations.

According to the "Official List No. 46" above referred to, the following officers, comprising very nearly all of those officers whose duties are of a general nature and extend over the entire system, hold positions as officers or agents for both companies, as follows:

Name.	St. Louis Southwestern Railway Company.	St. Louis Southwestern Railway Company of Texas.
F. H. Britton.....	Vice-president and General Manager,	President,
C. W. Nelson.....	Assistant General Manager,	Assistant to President,
H. E. Farrell.....	Freight Traffic Man- ager,	Second Vice-Presi- dent,
43		
W. N. Neff.....	General Superintend- ent,	First Vice-President and General Super- intendent,
Dr. C. A. Smith.....	Chief Surgeon,	Chief Surgeon,
N. A. Waldron.....	Store-keeper,	Store-keeper,
Guy L. Stewart.....	Agricultural and In- dustrial Agent,	Agricultural and In- dustrial Agent,
L. E. Saupe.....	Assistant Agricultu- ral and Industrial Agent,	Assistant Agricultural and Industrial Agent,
W. A. Conaway.....	Tax Agent,	Tax Agent,
C. H. Jennings.....	Commissary,	Commissary,
F. H. Jones.....	General Baggage Agent,	General Baggage Agent,
F. J. Hawn.....	Superintendent of Transportation,	Superintendent of Transportation,
W. J. Williams.....	Superintendent, Telegraph,	Superintendent, Telegraph,
Dr. H. H. Smiley...	Assistant Chief Sur- geon,	Assistant Chief Sur- geon,
Dr. H. Farrell.....	Hospital Staff,	Hospital Staff,

F. H. Britton.....	Director,	Director,
William H. Taylor..	Director,	Director,
W. N. Neff.....	General Superintend-	Director,
	ent,	
H. E. Farrell.....	Freight Traffic Man-	Director,
	ager,	
Arthur J. Trussell...	Transfer Agent,	Transfer Agent,
Central Trust Co.....	Registrar,	Registrar,
C. D. Purdon.....	Chief Engineer,	Consuting Engineer.

The Annual Reports Issued by the St. Louis Southwestern Railway Company of Texas and the St. Louis Southwestern Railway Company Are Combined and Show That There Is but One Railroad of which the St. Louis Southwestern Railway Company of Texas is a Division or Part.

Attached to this affidavit and made a part hereof is the report of the St. Louis Southwestern Railway Company of Missouri, for the year ending June, 1910, and marked "Exhibit B", and which is a further source of my information and ground for my belief
 44 that the two corporations comprise a unified system and that the agents of one are the agents of the other. The attention of this Court is respectfully directed to page 5 of the said report showing that the officers and agents of one hold similar positions in the other. Beginning at page 9 thereof a report given under the hand of the President, Edwin Gould of the St. Louis Southwestern Railway Company, at its office in New York, speaks among other things, of the acquiring by the St. Louis Southwestern Railway Company of other Texas Railroads connecting with the said system of which the St. Louis Southwestern Railway Company of Texas is a part or division.

It is further shown in the report made by Mr. F. H. Britton the President of the defendant herein and Vice-President of the St. Louis Southwestern Railway Company of Missouri which said report is directed to Edwin Gould the President of the St. Louis Southwestern Railway Company and beginning at page 11 thereof that he considers the two corporations to comprise one entire system as appears by the following extracts therefrom. On page 11, "The average number of miles of main track operated for the year, and upon which the mileage and other statistics embraced in this report are based were 1,473.1 miles, an increase of 3.3 miles. The main track mileage operated at the close of the fiscal year was 1,475.3 miles, an increase of 2.2 miles which covers the mileage used in entering the Ft. Worth, Texas, Union Passenger Station over the tracks of the Texas and Pacific Railway under an agreement granting rights, which mileage has not heretofore been reported as operated mileage."

On page 12, appears a statement of the financial results from the operation of the "Entire System." On page 13, in speaking of the agricultural and industrial departments connected with the "Cotton Belt Route," Mr. Britton, in his report refers to the fact that the fruit and early vegetable crops in South Texas were exceptionally

large and quality superior this year, and the results prove conclusively that the Texas peach comes to market early enough to avoid competition with the fruit from the other sections. On page 15 there is appended a table showing the average load per freight train and per loaded freight car for the past ten years, and which comprises four columns, the first headed "Year ended June 30th," the second headed "St. L. S. W. Ry. Co.," the third "St. L. S. W. Ry. Co. of Tex." and the fourth, the "Entire System." On page 16 another table similarly headed showing the average load in tons per train including company material.

Appended to the said report of F. H. Britton, are certain financial exhibits showing the unity of the system, and in the said report, the officers and agents of the said St. Louis Southwestern Railway Company, who prepared the said financial exhibits, do not consider that the two corporations operate separately as the said reports comprise the items for the "Entire System." On page 20 is the income account of the "entire system" comprising both corporations. On page 21, the profit and loss account of the "entire system." On page 22 and 23 is the condensed general balance sheet of the "entire system" in the form prescribed by — Interstate Commerce Commission. Appended to the said general balance sheet at page 22 is a note as follows:

"Note I. General Balance Sheet.—Entire System, as above stated, represents a consolidation of the general balance sheets of the St. Louis Southwestern Railway Company and the St. Louis Southwestern Railway Company of Texas. In stating the assets and liabilities of the system, the holdings of the St. Louis Southwestern Railway Company in the bonds and capital stock of the St. Louis Southwestern Railway Company of Texas, together with the loans and advances made as between the two companies have been eliminated from the liabilities and a like reduction in the assets pertaining thereto. The figures shown, therefore, represent the book value of the assets and liabilities of the system without duplication.

See Appendix for general balance sheet of each company separately." Page 24 is a table showing the operating revenue, operating expense, net operating revenue, outside operations, taxes accrued, ratios and average per mile operated for the "entire system." On page 26 is a total showing the detail of operating expenses for the "entire system." On page 28 are tables showing the taxes accrued for the "entire system," the tax paid for the "entire system" and the rents accruing from the lease of the Magnolia Branch to the Louisiana Northwest Railroad Company by the "entire system." On page 29 is a table showing the interest accrued on the funded debt owned or controlled by the "entire system." On page 30 is a table showing the rents accrued for the lease of Gray's Point Terminal Railway by the "entire system" and a table showing the interest accrued on the funded debt of the "entire system." On page 31 is a table showing the property investment of the "entire system" and the expenditures for the additions and betterments for both corporations in the "entire system." On page 32 is a further table showing other investments of the

"entire system." On page 33 is a table showing the capital stock of the "entire system." On page 34 is a table showing the funded debt of the "entire system." On page 35 is a table showing the security for the funded debt of the "entire system." It is to be noted in this table that under the security for the funded debt of the entire system appears 695.21 miles of track in the State of Texas, which is mortgaged as security for the said funded debt. On page 36 is a table showing the working, accrued and deferred assets and the working and deferred liabilities for the "entire system." On page 39 is a table which furnishes in condensed form, an analysis of all the resources and how the same were applied by the "entire system." On page 40 and 41 under the heading of "Traffic" appears two tables showing the traffic statistics and classification of revenue tonnage for the "entire system." On page 42 and 43 under the heading of "Transportation" appear two tables showing the locomotive 47 car and train statistics, amounts paid for and received per Diem, mileage and hire of freight cars for the "entire system." On page 44 and thereafter under the heading of "Maintenance of Way and Structures", appears a paragraph showing that the total charges to this account were made by the "entire system," and appended thereto are certain tables showing the character of rail in main track and character of ballast, the fencing on right of way, description of telegraph lines, comparison of maintenance and improvements in road department, a statement of the building and bridge department, a statement of trestle bridges, a statement of renewals and improvements in bridge and building department and a statement of the engineering department, all of which statements are for the "entire system." On page 53, under the heading of Improvement Work in the Engineering Department, the last four paragraphs on the said page show improvements made in the State of Texas by the St. Louis Southwestern Railway Company. Beginning at page 54 under the heading of Maintenance Equipment, appear certain tables showing the list of equipment owned and leased, the capacity of equipment, the average number of freight cars per mile of road operated, the maintenance of equipment of rolling stock for the "entire system."

On page 56 appears the signature to the foregoing statements, of F. H. Britton as Vice-President and General Manager of the St. Louis Southwestern Railway Company, who is also president of the St. Louis Southwestern Railway Company of Texas. On page 58 appears a statement showing miles of track operated for the "entire system", and beginning at page 59 are certain tables of comparative statistics showing for the "entire system" the revenues and expenses by months, the net operating revenues by months, the additions and betterments by months, the summary of the income account, the summary of the profit and loss account, passenger traffic statistics, freight traffic statistics, cars in revenue service, owned and leased locomotive and train mileage, car mileage, miscellaneous statistics. On page 69 is a condensed general balance sheet of the St. Louis Southwestern Railway Company, where 48 it appears under "Assets", that the securities of proprietary, affiliated

and controlled companies pledged, the securities issued or assumed pledged, the securities of proprietary, affiliated and controlled companies unpledged amounted to \$32,676,677.87 to which reference will be hereinafter made. Further items in this condensed balance sheet show the close affiliations and the unity of the two corporations. On page 72 appears a table of the Hospital Service of the "entire system" showing, among other things, the number of dispensary cases treated by the entire system in the cities and towns of St. Louis, Illmo, Malden, Jonesboro, Pine Bluff, Mt. Pleasant, Texas, Waco, Texas, Commerce, Texas, Tyler, Texas and Texarkana.

Further sources of my information and grounds of my belief that the agents of the St. Louis Southwestern Railway Company of Missouri and the agents of the St. Louis Southwestern Railway Company of Texas are agents of both corporations, interchangeably, are statements and reports found in Poor's Manual of 1910, beginning at page 1156.

These statements and reports are based upon information obtained from the applications made by corporations for the listing of their stocks and bonds on the various stock exchange- and from information obtained direct from the duly qualified officers and agents of the corporations reported.

Under the heading of History, the Manual states that the St. Louis Southwestern Railway Company on the 12th day of January, 1891, was chartered under the laws of Missouri as a reorganization of the St. Louis Southwestern Arkansas and Texas Railway Company, whose property was sold under foreclosure in October, 1890. Three Companies were formed. The St. Louis Southwestern Railway Company, the St. Louis Southwestern Railway Company of Texas and the Tyler Southeast Railway Company.

On November 10, 1907, the St. Louis Southwestern Railway Company purchased from the Lufkin Land and Lumber Company a corporation of the State of Texas 15.53 miles of Standard Gauge railroad extending from a point near Warsaw to Pine Bluff and issued therefor Three hundred and ten thousand dollars (\$310,000) first consolidated mortgage bonds.

The St. Louis Southwestern Railway Company of Missouri owns the entire capital stock of the Eastern Texas Railway Company operating 30.3 miles of track from Lufkin, Texas, to Kennard, Texas, way operating 43.2 miles from Stephenville, Texas, to Hamilton, way operating 43.2 miles from Stephenville, Texas, to Hamilton, Texas, by the purchase of the entire capital stock of the said corporation, which said road connected with the St. Louis Southwestern Railway Company of Texas. The outstanding bonds of Six hundred and fifty eight thousand five hundred dollars (\$658,500), first mortgage 5% bond, due October 1, 1937, were replaced by the new issue of like amount guaranteed principal and interest by the St. Louis Southwestern Railway Company.

In the several balance sheets attached to the report in the said Poor's Manual, beginning at page 1160 appear the following statements:

"Miles of trackage owned, miles of road owned, miles of road

operated, miles of track operated, locomotive, passenger cars, freight cars and service cars, road and equipment real estate, stocks and bonds, materials and supplies and other assets, and other financial reports and statements, all of which statements include and comprise all of its subsidiary, affiliated and controlled roads, particularly the St. Louis Southwestern Railway Company of Texas."

Funded debt of the St. Louis Southwestern Railway Company showing that bonds and other obligations of the said company are secured by the property of the entire system including therein the property of the St. Louis Southwestern Railway Company of Texas as well as the property of the St. Louis Southwestern Railway Company.

50 The funded debt outstanding June 30th, 1909, was Forty-five million three hundred and four thousand and three hundred and fifty dollars (\$45,304,350), Twenty million dollars (\$20,000,000) first mortgage 4% gold bond certificate, dated November 1, 1890, due November 1, 1989, interest payable May 1st and November 1st at the office of the trustee, Central Trust Company, New York, coupon certificates One thousand dollars (\$1,000) each registerable as to principal at office of trustee. These certificates were issued in New York in exchange for equal amount of first mortgage bonds of constituent companies deposited with the trustee as follows:

Nine million, eight hundred and ninety-five thousand dollars (\$9,895,000) first mortgage 4% bonds of the St. Louis Southwestern Railway Company, secured upon 581.8 miles of road in Missouri, Arkansas and Louisiana, Nine million four hundred and forty-five thousand dollars (\$9,445,000) first mortgage 4% bonds of the St. Louis Southwestern Railway Company of Texas, secured upon 572.5 miles of road in Texas and Six hundred and sixty thousand dollars (\$660,000) first mortgage 4% bond of the Tyler Southwestern Railway Company, secured upon the line from Tyler to Lufkin, Texas, 88.8 miles. Listed on New York Stock Exchange.

Three million and forty-three thousand and five hundred dollars (\$3,043,500) second mortgage 4% gold bond certificates, dated November 1, 1890, due November 1, 1989, payable in October and April, if earned in the preceding calendar half year, payable January 1st and July 1st at the office of the trustee, the Mercantile Trust Company, New York, N. Y., coupon certificates Five hundred dollars (\$500) and One thousand dollars (\$1,000) each, transfer agent Mercantile Trust Company, New York City. These certificates represent Ten million dollars (\$10,000,000) second mortgage income bonds of the constituent companies, deposited with the trustee as follows: Four million nine hundred and forty-seven thousand

51 sand and five hundred dollars (\$4,947,500) second mortgage income bonds of the St. Louis Southwestern Railway Company secured upon 581.8 miles of railroad Four million seven hundred and twenty-two thousand and five hundred dollars (\$4,722,500) second mortgage income bonds of the St. Louis Southwestern Railway Company of Texas, secured upon 572.5 miles of railroad and Three hundred and thirty thousand dollars (\$330,000), second

mortgage income bonds of the Tyler Southeastern Railway Company, secured upon 88.6 miles of railroad. Amount authorized and issued Ten million dollars (\$10,000,000) bond amounting to Six million nine hundred and fifty-six thousand and five hundred dollars (\$6,956,500), being deposited with the trustee under the first consolidated mortgage, having been exchanged for 90% of their face value in bonds secured by that mortgage, which leaves only Three million and forty-three thousand and five hundred dollars (\$3,043,500) of them outstanding as of June 30th, 1909. Listed on New York Stock Exchange.

Twenty-two million two hundred and sixty thousand and eight hundred and fifty dollars (\$22,260,850), first consolidated mortgage 4% gold bonds, dated June 1, 1902, due June 1, 1932, interest payable June 1st and December 1st, at office of trustee, Equitable Trust Company, New York City. It is these bonds spoken of in the Stock Exchange application No. 3599 hereinafter referred to. The principal and interest are payable in gold. Coupon bonds One thousand dollars (\$1,000) each registerable as to principal at trustee's office, secured upon the entire property of the company including the securities already deposited under the second income mortgage, subject to prior liens and additionally secured by deposit of Six million nine hundred and fifty-six thousand and five hundred dollars (\$6,956,500) second mortgage income bonds already exchanged on Five million five hundred and forty-six thousand and eight hundred and thirty-three and 20/100 dollars (\$5,546,833.20) equipment obligations of the company, on Two hundred and eighty thousand dollars (\$280,000) Dallas Branch, first mortgage bonds, Two

52 hundred and ninety-two thousand dollars (\$292,000) Lurkin extension, first mortgage bonds of the St. Louis Southwestern Railway Company of Texas, being the entire issues thereof, on One hundred and ninety-nine thousand and five hundred dollars (\$199,500) capital stock and One hundred and twenty-six thousand dollars (\$126,000) first mortgage bonds of Pine Bluff Arkansas River Railway Company on Nine thousand and three hundred dollars (\$9,300) capital stock and Seven hundred and thirty-one thousand dollars (\$731,000) first mortgage bonds of the Dallas Terminal Railway and Union Depot Company, being the entire capital stock except directors' shares and all the bonded debts of these companies and Four hundred and fifty-three thousand and five hundred dollars (\$453,500) capital stock of the Eastern Texas Railroad Company, a total of Fourteen million five hundred and ninety-four thousand six hundred and thirty-three and 20/100 dollars (\$14,594,833.20) securities mortgaged. They are secured by first mortgage on the lines from Stuttgart to Gillett, Arkansas 35.1 miles and from Lurkin, Texas to end of track point, Monterey, Texas, 41.31 miles, and will be secured on any additional lines or property acquired by issuing of bonds secured by the same mortgage, either direct mortgage or by deposit of securities representing ownership of such additional lines of property. By the terms of the mortgage, all securities deposited as collateral under it are to be first made non-negotiable, and provision also made for the cancellation of any de

posited bonds as fast as the whole of the issue is delivered to the trustee of the mortgage.

It is provided further that so long as there is no default in the payment of the principal or interest of any of the first consolidated mortgage bonds (a) neither the principal nor the interest of any equipment obligations deposited under the mortgage shall be required to be paid, unless the proceeds shall have been expended to foreclose such equipment obligations. (b) That the com-

pany shall be entitled to collect all income from stocks, bonds or other obligations deposited under the mortgage. (c)

That in case any sum shall be paid on account of the principal of any bonds or other obligations at any time deposited under the mortgage or any sum shall be paid on account of the interest on any such bonds or obligations out of the proceeds of the property covered by any mortgage or other indenture securing such bonds or obligations, or upon the dissolution or liquidation of any company any sum shall be paid on any shares of stock of such company pledged under the mortgage, such sum shall be set apart from the proceeds as a sinking fund for the purchase of bonds secured by the mortgage or of second mortgage income bonds, or for the acquisition of additional property to be covered by the mortgage; any bonds acquired through the operation of the sinking fund to be deposited under the mortgage as additional security therefor. The mortgage authorized a total issue of Twenty-five million dollars (\$25,000,000) bonds for the following purposes: Nine million (\$9,000,000) dollars for the acquisition of the Ten million dollars (\$10,000,000) for capital requirements, particularly the retirement of equipment obligations, the remaining Ten million dollars (\$10,000,000) together with any surplus bonds of the two other lines for the acquisition of branches and extensions at a rate not exceeding Twenty thousand dollars (\$20,000) per mile and for betterments, additions and new equipment. The total of these bonds issued before June 20, 1909, was Twenty-two million, two hundred and sixty-thousand and eight hundred and fifty dollars (\$22,260,850), of which One million nine hundred and ninety-three thousand and one hundred dollars (\$1,993,100) is owned by the company. There were issued in February, 1910, Twenty-two million two hundred and sixty-one thousand and seven hundred and fifty dollars (\$22,261,750) applied for the following purposes:

General Corporation purposes.....	\$6,000,000
In exchange for second mortgage income certificates.....	6,261,950
	<hr/>
	\$12,261,950
54 Carried forward.....	\$12,261,950
For betterments and improvements.....	4,352,800
In exchange for securities of Pine Bluff & Arkansas River Railroad	480,000
For equipment and extensions and St. Louis Southwestern Railway Company of Texas, Dallas Extension	120,000

Lufkin, Texas extension.....	830,000
For construction and acquisition of terminal prop- erties or Dallas, Texas Terminal Railway and Union Depot Company	992,000
For acquisition of outstanding equipment obligations of the company.....	2,619,000
For acquisition of entire capital stock of the Eastern Texas Railroad Company.....	606,000
Total	<u>\$222,261,750</u>

The St. Louis Southwestern Railway Company has further issued certain equipment trust obligations, which on June 30, 1909 aggregated Six million seven hundred and thirty-two thousand and two hundred and fifty and 02/100 dollars (\$6,732,250.02). From this amount must be deducted the equipment trust notes above referred to, deposited with the Equitable Trust Company to under-lie the first consolidated mortgage of 1902 and amounting to Five million five hundred and forty-six thousand eight hundred and thirty-three and 20/100 dollars (\$5,546,833.20). These equipment trust obligations cover equipment on the entire system and comprise One million one hundred and eighty-five thousand four hundred and sixteen and 02/100 dollars (\$1,185,416.02) outstanding in the hands of the public, being principally car trust notes for cars, coach, locomotives and coal cars for the entire system.

In December 1909, the St. Louis Southwestern Railway Company sold Seven hundred and twenty-two thousand dollars (\$722,000) equipment 5% gold bonds maturing Seventy-two thousand dollars (\$72,000) annually from January 1st, 1911 to January 1st, 1920. The Mercantile Trust Company is the trustee. The said bonds cover sixteen locomotives, twenty passenger coaches and five hundred stock and lumber cars for the entire system.

In May, 1909, the company executed an equipment trust to the United States Mortgage and Trust Company to secure an issue of Four hundred and sixty thousand dollars (\$460,000) 5% equipment trust certificates covering sixteen locomotives and twenty-three passenger cars for the entire system.

The securities owned by the St. Louis Southwestern Railway Company's entire system on June 30, 1909, comprised, among other things, St. Louis Southwestern Railway Company of Texas, securities amounting to Five hundred and seventy-two thousand (\$572,000) dollars first mortgage bonds on the Dallas and Lufkin branches.

Separate Balance Sheet of the St. Louis Southwestern Railway Company of Texas, Showing its Obligations to the St. Louis Southwestern Railway Company and that it is Controlled Absolutely by the St. Louis Southwestern Railway Company.

The general balance sheet of the St. Louis Southwestern Railway Company of Texas, as of June 30, 1909, is as follows:

Liabilities.

Capital Stock.....	\$2,750,000
Funded debt.....	15,729,500
Current liability.....	1,024,306
St. Louis Southwestern Railway.....	7,956,012
Total	\$27,459,818

Assets.

Cost of road and equipment.....	21,397,412
Cash.....	210,135
Material, etc.....	453,074
Sundry accounts.....	457,778
Prepaid insurance.....	8,825
Profit and loss.....	4,932,804
Total	\$27,459,818

The capital stock Two million seven hundred and fifty thousand dollars (\$2,750,000) is all owned by the St. Louis Southwestern Railway Company, Registrar, Central Trust Company of New York, Transfer Agent, Arthur J. Trussell, 165 Broadway, New York.

The funded debt and all stocks, bonds, and other obligations of the St. Louis Southwestern Railway Company of Texas are owned by the St. Louis Southwestern Railway Company.

The funded debt, June 30, 1909, consisted of Fifteen million, seven hundred and twenty-nine thousand and five hundred dollars (\$15,729,500) as follows:

Nine million, four hundred and forty-five thousand dollars (\$9,445,000) first mortgage 4% bonds, all owned by the St. Louis Southwestern Railway Company and pledged under that Company's first mortgage as above, secured upon 581.1 miles of road in Missouri, Arkansas and Louisiana.

Four million seven hundred and twenty-two thousand and five hundred dollars (\$4,722,500) second mortgage 4% income bonds, owned by the St. Louis Southwestern Railway Company and pledged under that Company's second mortgage, secured upon 572.5 miles of railroad.

Six hundred and sixty thousand dollars (\$660,000) Tyler South-eastern Railway first mortgage 4% bonds owned by the St. Louis Southwestern Railway and pledged under that Company's first mort-

gage, secured upon the line from Tyler to Lufkin, Texas, 68.6 miles.

Three hundred and thirty thousand dollars (\$330,000) Tyler Southeastern Railway Company, second mortgage income bonds, all owned by the St. Louis Southwestern Railway Company and pledged under the Company's second mortgage, secured by second lien on the line from Tyler to Lufkin.

Two hundred and eighty thousand dollars (\$280,000) St. Louis Southwestern Railway Company of Texas, 5% bonds, Dallas Branch, 12 miles owned by St. Louis Southwestern Railway Company and pledged under that Company's first consolidated mortgage.

New York Stock Exchange Application No. A. 3599 Made by a
Duly Qualified Officer of Both Companies Shows the Unity of the
Two Roads.

A further source of your deponent's information and ground of his belief is an application made under seal by Arthur J. Trussell, the Secretary of the St. Louis Southwestern Railway Company, who is the transfer agent of the said Company and of the St. Louis Southwestern Railway Company of Texas, on the 14th day of February, 1910, to the New York Stock Exchange, requesting that the said Stock Exchange list an additional amount of the said company's consolidated mortgage 4% bonds in the amount of One hundred and forty-two thousand dollars (\$142,000) par value, which said application is numbered Stock Exchange No. A. 3599. In the said application, Mr. Trussell states that the said bonds are dated June 1, 1902 and will mature June 1, 1932, and the interest and principal are payable in the City of New York, bearing interest at the rate of 4% per annum and payable on June 1st and December 1st semi-annually. The trustee of the said mortgage is the Equitable Trust Company, successor of the Bowling Green Trust Company. The total amount of bonds authorized to be issued under the said mortgage is Twenty-five million dollars (\$25,000,000). The bonds covered by the present application are a portion of the bonds reserved under Section 1 of Article 2 of this company's first consolidated mortgage, and were executed, certified and delivered to the company by the trustee of the said mortgage in accordance with the terms thereof upon the deposit with the said trustee of One hundred and fifty six thousand dollars (\$156,000) par value of this company's second mortgage income bond certificates with June 1909 and all subsequent coupons attached and One thousand dollars (\$1,000) par value of said second mortgage income bond certificates with December 1909 and all subsequent coupons attached. All of the bonds covered by the present application have been sold and disposed of and are now outstanding. Attached to the said application is a statement of the issuance of this company's first consolidated mortgage 4% gold bonds, a statement of the income account for the fiscal year to December 31st, 1909, and general balance sheet dated December 31st 1909. As appears by this specific application, the bonds form a part of the company's first consolidated

mortgage 4% gold bonds and, in the statement of the issuance of these bonds appear, among other things, the following expenditures to cover which the said bonds were issued:

53 "For equipment and extension of St. Louis Southwestern Railway Company of Texas (Dallas Extension)	\$120,000
"For equipment and extension of St. Louis Southwestern Railway Company of Texas (Lufkin Extension)	520,000
"For equipment and further extension of St. Louis Southwestern Railway Company of Texas (Lufkin Extension)"	310,000
Total	<u>\$950,000</u>

The statement of the income account and the general balance sheet above referred to comprise the expenditures, assets and liabilities of the entire system, which includes the Texas corporation.

On the representations made in the said application it received the recommendation of the committee of the New York Stock Exchange and the bonds were thereafter duly listed by the said Stock Exchange.

Offices of the St. Louis Southwestern Railway Company of Texas and of the St. Louis Southwestern Railway Company in the City of New York.

A further source of your deponent's information and grounds for his belief that the agents of the St. Louis Southwestern Railway Company of Missouri are the agents of the St. Louis Southwestern Railway Company of Texas is found in a statement made on the glass door of Room No. 805, in the Dunn Building at 290 Broadway, in the Borough of Manhattan, City, County and State of New York. Placed on the said glass door is the symbol "Cotton Belt Route", which is found on all the stationery and literature of the St. Louis Southwestern Railway Company and of the St. Louis Southwestern Railway Company of Texas. Underneath the same are the words "St. Louis Southwestern Lines", and underneath this statement appear the names P. H. Coombs, General Eastern Freight and Passenger Agent, and C. W. Braden, Travelling Freight Agent.

I desire further to say to this Court that before this action
 10 herein was commenced, I wrote several letters to the office above described in relation to this action and endeavored to bring about a settlement of the claim of the plaintiff herein rather than to proceed to litigation. In these said letters I explained quite fully the nature of the action and the basis of the claim, stating that the St. Louis Southwestern Railway Company of Texas was the initial carrier herein and had issued a bill of lading for the said consignment herein. To all of the letters sent to the said office, I received replies acknowledging the receipt of the same and stating further, among other things, that all claims were handled by the general office at either St. Louis, Missouri, or Tyler, Texas,

and that the agent in the New York office was sending my letter to the St. Louis office, which is the office of the St. Louis Southwestern Railway Company, and hoped to receive a satisfactory reply from the said St. Louis office at an early date. One of the said letters which I wrote to the above office was forwarded to Mr. S. C. Johnson, who is the auditor of the St. Louis Southwestern Railway Company, Freight Claim Division and the General Adjuster of all freight claims of the "Cotton Belt Route". Mr. Johnson replied, stating that he could not at that time write intelligently concerning the claim, as all the papers covering his investigation were transmitted to Mr. Cunningham, the Freight Agent of the New York Central Lines, and that he, as soon as he received these papers from Mr. Cunningham, would be very glad to review the matter and write fully regarding the said company's position. The said letter, although in reply to a claim made against the St. Louis Southwestern Railway Company of Texas was written on a letter head of the St. Louis Southwestern Railway Company and takes up the claim specifically as though belonging to it. These said letters are in my possession and will be submitted to the Court for inspection if so desired.

At the time that the original claim for damage was made by the plaintiff herein to the company direct, his correspondence with the said company and negotiations with the said St. Louis Southwestern Railway Company of Texas, looking toward an adjustment of his claim, were all carried on with Mr. H. P. Coombs, hereinafter referred to in the office in the Dun Building above described.

The St. Louis Southwestern Railway Company has its administrative offices in the City of New York as shown by the following facts:

On the glass door of room 803 in the City Investment Building, at 165 Broadway, in the City, County and State of New York, appears this inscription:

St. Louis Southwestern Railway Co.,
Office of President.

Secretary.

On the glass door of room 808 of the same building appears this inscription:

St. Louis Southwestern Railway Co.
Transfer Office.

On the Directory of offices in the corridor on the main floor of the same building appear the following:

"St. Louis Southwestern Ry. Co., 802.
Transfer Office, 808.

These facts show that the St. Louis Southwestern Railway Company of Texas is doing business in New York City through duly

authorized agents, and show further one instance of the interchangeability of the agencies between the St. Louis Southwestern Railway Company of Texas and the St. Louis Southwestern Railway Company.

Other offices are as follows:

Arthur J. Trussell, 165 Broadway, in the City, County and State of New York, Transfer Agent of the St. Louis Southwestern Railway Company of Texas and of the St. Louis Southwestern Railway Company.

61 Central Trust Company, 54 Wall Street, in the City, County and State of New York, Registrar of Capital Stock of the St. Louis Southwestern Railway Company of Texas and of the St. Louis Southwestern Railway Company. Registrar and trustee of and agent for the payment of interest on Twenty million dollars (\$20,000,000) first mortgage four per cent gold bonds due 1989, of the St. Louis Southwestern Railway Company, secured by the property of both corporations.

Mercantile Trust Company of 120 Broadway in the City, County and State of New York. Transfer agent and trustee of and agent for the payment of Three million and forty-three thousand and five hundred dollars (\$3,043,500), second mortgage 4% bonds due 1989, secured by second mortgage on the property of both corporations and as Transfer Agent and trustee of and agent for the payment of interest and the annual installment of Seventy-two thousand dollars (\$72,000) on Seven hundred and twenty thousand dollars (\$720,000) 5% gold equipment bonds due 1920. Secured on equipment on the entire system.

Equitable Trust Company, 15 Nassau Street, in the City, County and State of New York. Registrar and agent for the payment of principal and interest on Twenty-two million two hundred and sixty thousand and eight hundred and fifty dollars (\$22,260,850), First consolidated mortgage 4% gold bonds due 1930.

Directors' Meetings of the St. Louis Southwestern Railway Company Transact Business for the St. Louis Southwestern Railway Company of Texas in New York City.

I allege further that at frequent intervals, directors' meetings of the St. Louis Southwestern Railway Company are held in the City of New York, in the County and State of New York, at the office of the president of the said company, Mr. Edwin Gould. At the said meetings much business is transacted concerning the entire system. The matter discussed and acted upon and the business done refers to the St. Louis Southwestern Railway Company of Texas as comprising nearly one-half of the mileage of the entire system as much as it refers to the St. Louis Southwestern Railway Company. Further, six of the nine directors of the St. Louis Southwestern Railway Company are residents of the State of New York.

I also respectfully draw the attention of this Court to the fact that two of the directors of the St. Louis Southwestern Railway Company

of Texas are residents of the State of New York, one of whom, Mr. William H. Taylor, is also a director of the St. Louis Southwestern Railway Company.

The Agents of the St. Louis Southwestern Railway Company Consider Themselves to be the Agents of the St. Louis Southwestern Railway Company of Texas.

By the facts more fully stated in the affidavit of Robert M. Richter, hereto attached and made a part hereof and marked "Exhibit B", which facts form further sources of my information and grounds for my belief that the said St. Louis Southwestern Railway Company of Missouri is the duly qualified agent of the St. Louis Southwestern Railway Company of Texas, it appears that the agents and employees at the office of the St. Louis Southwestern Railway Company of Missouri consider that the two corporations are a unit in system, that the agents of one are the agents of the other and that the incorporation of the Texas Branch of the Cotton Belt Route was done, because of the provision peculiar to the State of Texas, to wit, that no property can be held within the State of Texas by other than a bona fide inhabitant of the State.

The Cause of Action Arose in the State of New York.

As appears by the complaint herein, the St. Louis Southwestern Railway Company of Texas was the initial carrier of the shipment of dressed poultry, which it covenanted and promised to deliver to the plaintiff herein without delay or damage. The goods 63 arrived in New York City and were delivered to the plaintiff in a decayed and damaged condition due to the negligence of the defendant and its connecting carriers herein. This action is brought also under and by virtue of the Carmack amendment to the Hepburn Act—one of the Acts of Congress found in 34 Statutes at Large, 584e, 3591, "Act to Regulate Commerce," Section 20, as charged by the said amendment, dated June 29, 1906, which states "That any common carrier, railroad or transportation company receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor and shall be liable to the holder thereof for any loss, damage or injury to such property caused by it or by any common carrier, railroad or transportation company, to which such property may be delivered or over whose line or lines such property may pass and no contract, receipt, rule or regulation shall exempt such common carrier railroad or transportation company from the liability thereby imposed."

As the cause of action arose in this state, in that the said shipment was not delivered to the plaintiff herein in good order and without delay or damage, the service of the summons herein was made in accordance with Section 432, Sub-division 3 of the Code of Civil Procedure of the State of New York, which states "Personal service of the summons upon a defendant, being a foreign

corporation, must be made by delivering a copy thereof within the state as follows: 3. If such a designation is not in force, or if neither the person designated, nor an officer specified in subdivision first of this section, can be found with due diligence and the corporation has property within the state or cause of action arose therein to the cashier, a director or managing agent of the corporation within the State."

Conclusion.

On all of the above facts herein stated, I have based my belief that the two corporations are united in one system known as the "Cotton Belt Route;" that the St. Louis Southwestern Railway Company of Texas is operated in conjunction with and by the St. Louis Southwestern Railway Company, that the St. Louis Southwestern Railway Company of Texas is nothing but a division of one railroad system and that the officers and agents in the State of New York of the St. Louis Southwestern Railway Company are the duly authorized officers and agents of the St. Louis Southwestern Railway Company of Texas; that the agents of one are the agents of the other interchangeably, and that the only reason for the separate incorporation of each was to be able to comply with the provisions of the state laws of the State of Texas, allowing bona fide inhabitants only to hold property in the said state.

Wherefore it is respectfully prayed that the motion made by the defendant herein to quash the services of the summons and to dismiss the same for want of jurisdiction over the defendant, be dismissed and that the service on the defendant herein be sustained, and for such further relief as your Honorable Justice herein may direct. And further your affiant sayeth not.

PHELAN BEALE.

Sworn to before me this 16th day of August, 1911.

[SEAL.]

KATHARINE A. WOODS,
Notary Public, Kings County, No. —.

Cert. filed in N. Y. County, No. —.

EXHIBIT "A."

New York Supreme Court, County of New York.

ROBERT ALEXANDER, Plaintiff,

vs.

ST. LOUIS SOUTHWESTERN RY. CO. OF TEXAS, Defendant.

STATE OF NEW YORK,
County of New York, ss:

Pierre J. Grilliere, being duly sworn, deposes and says:

That he is a clerk in the office of Phelan Beale, the attorney for the plaintiff herein and is over the age of 21 years. That on the

10th day of July, 1911, at 120 Broadway, City, County and State of New York he served the within summons and verified complaint personally on the above named St. Louis Southwestern Railway Co. of Texas, the defendant herein, by delivering a copy thereof to Lawrence Greer of the City, County and State of New York personally and leaving the same with him, and that he knew the said Lawrence Greer to be at that time a Director of the said St. Louis Southwestern Railway Co. of Texas and knew the said corporation so served to be the company named and described in the complaint.

That no person has been designated by said corporation by Section 432 Subdivision 2 of the Code of Civil Procedure as appears by copies of the telegrams duly sent and received by the attorney for the plaintiff to and from the Secretary of State of the State of New York, as follows:

66 "Secretary of State, Albany, New York:

Has the St. Louis Southwestern Railway Company of Texas designated an officer upon whom service of summons and complaint may be made? Has the said corporation a certificate of authority to do business in this State? Wire answer collect.

PHELAN BEALE,
2 Wall Street."

"Phelan Beale, New York:

No designation made by St. Louis Southwestern Railway Company. No certificate of authority issued.

EDWARD LAZANSKY,
Sec'y State."

The said original telegrams are now in the possession of the attorney for the plaintiff for submission to the Court at any time such submission is desired.

That the President, Vice President, Treasurer, and Secretary of the said defendant corporation are non-residents of the State of New York and each is at the present time without the said State of New York. That the President of the said defendant Mr. F. H. Britton, is a resident of St. Louis, Mo.; that Mr. W. N. Neff, First Vice-President, is a resident of Tyler, Texas; that Mr. H. E. Farrell, the Second Vice-President, is a resident of St. Louis; that Mr. R. D. Cobb, the Secretary, is a resident of Tyler, Texas; that Mr. J. W. Hovan, the Treasurer, is a resident of Tyler, Texas and that all of these said officers do now remain constantly in their respective residences. The said defendant corporation has no Assistant Secretary or Assistant Treasurer.

67 The sources of your deponent's information and the grounds of his belief are the statements made in the annual report prepared, published and issued by the said defendant corporation; statements made to him by Arthur J. Trussell, the Stock Transfer Agent in New York City of the said St. Louis Southwestern Railway Co. of Texas, who is also the Secretary of the St. Louis Southwestern Railway, a corporation controlling the said defendant

corporation; statements made by other agents of the said defendant corporation, and statements made by the above mentioned Lawrence Greer, a director of the defendant corporation, to Robert M. Richter, a clerk in the office of Phelan Beale the attorney herein as more fully appears by the affidavit of the said Robert M. Richter hereto annexed and made a part hereof and which statements were communicated to your deponent by the said Robert M. Richter.

Before serving the said Lawrence Greer, your deponent made due and diligent search for the officers above named but was unable to find any one of the said officers within the jurisdiction of the State of New York.

Your deponent further says that the defendant corporation has offices within the State of New York, to wit: one maintained by it at #165 Broadway, in the Borough of Manhattan, City, County and State of New York, as a transfer office of the stock of the said St. Louis Southwestern Railway Co. of Texas, and in charge of Mr. Arthur J. Trussell, as the Transfer Agent of the said defendant, and one maintained by the said St. Louis Southwestern Railway Co. of Texas as a Registry office of its stock, at #222 Broadway, in the Borough of Manhattan, City, County and State of New York, and in charge of the Colonial Trust Co. as Registrar of the stock of the said company.

Your deponent further says that the said company has property located within this State in these said offices which consists of account books, stock books, transfer books, registry books, desks, chairs office equipments and other property.

Your deponent further says that the cause of action arose in this State as appears more fully from the complaint hereunto annexed.

PIERRE J. GRILLIERE.

Sworn to before me this 11th day of July, 1911.

KATHARINE A. WOODS,
Notary Public, Kings County, No. 4629.

Cert. Filed in N. Y. County, No. 3225.

69 New York Supreme Court, County of New York.

ROBERT ALEXANDER, Plaintiff,
against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
Defendant.

STATE OF NEW YORK,
County of New York, ss:

Robert M. Richter being duly sworn, deposes and says:

I am a Clerk in the office of Phelan Beale, the attorney for the plaintiff herein, and am over the age of twenty-one years. On the 7th day of July, 1911, I called at the office of Lawrence Greer, a Director in the St. Louis, Southwestern Railway Company of Texas, the defendant above named, with the annexed summons and complaint, and requested that he, as attorney for the said defendant,

admit service thereon. Mr. Greer examined the complaint and stated that although he was the attorney for the said defendant he could not admit service of the said summons and complaint on behalf of the said defendant. I then asked him if any of the officers of the said defendant were in the City of New York so that I might serve one of them, personally, on behalf of the defendant corporation, and he informed me that none of them were at that time within the jurisdiction of the State of New York, and advised
70 me to bring suit in Texas. I informed him that I would make due and diligent search or cause due and diligent search to be made for one of the officers, which, under Section 432 of the Code of Civil Procedure, it was proper to serve, and upon the failure to find such proper officer I would then serve him as Director. Mr. Greer was willing to accept the service as Director at the time I spoke to him, but as I had not made or caused to be made due and diligent search for the proper officer under Section 432 of the Code of Civil Procedure, I could not at that time make a proper affidavit of service.

These statements made by Mr. Greer to the effect that all of the officers were non-residents of the State of New York and were at that time without the jurisdiction of the State of New York, and that he did not know when any of them would be within the jurisdiction of the State of New York, I communicated to Mr. Pierre J. Grilliere, to whose affidavit this is annexed and made a part thereof.

ROBERT M. RICHTER.

Sworn to before me this 11th day of July, 1911.

KATHARINE A. WOODS,

Notary Public, Kings County, No. 4629.

Cert. Filed in N. Y. County, No. 3225.

71

EXHIBIT "C."

In the Circuit Court of the United States for the Southern District of New York.

ROBERT ALEXANDER, Plaintiff,
against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
Defendant.

To the Honorable the Judges of the Circuit Court of the United States for the Southern District of New York:

STATE OF NEW YORK,
County of New York, ss:

Robert M. Richter, being duly sworn, deposes and says: I am a clerk in the office of Phelan Beale, Esq., the attorney for the plaintiff herein, at No. 2 Wall Street, in the Borough of Manhattan, City, County and State of New York.

On August 8th, 1910, I proceeded to the offices of the St. Louis Southwestern Railway Company, comprising rooms Nos. 802-808 inclusive, at 165 Broadway, in the Borough of Manhattan, City, County and State of New York, which are the offices of the President and Secretary of the said company and also the transfer office of the said company. Seated behind a window into this latter office was a gentleman to whom I addressed an inquiry as to the location of the office of the St. Louis Southwestern Railway Company of Texas. He then asked me what sort of business I desired to transact so that he might tell me to which office I should go. At this point another gentleman, who was seated before a large square table desk, occupying at least one half of the space in the room, approached and asked me what my business was with the St. Louis Southwestern Railway Company of Texas. I told him I desired information as to where I could make contracts of shipments of goods to New York originating on the said St. Louis Southwestern Railway Company of Texas. He informed me that the proper office for me to go to was the office of the said company at 290 Broadway, City, County and State of New York.

I then engaged both of the said gentlemen in a general conversation concerning the Southwestern System, and I was informed that the said railroad system, known as the "Cotton Belt Route" was operated as a unit, and that so far as operation, equipment mortgages and all administrative and executive affairs were concerned, there was no such railroad as the St. Louis Southwestern Railroad Company of Texas, and that the Missouri and Texas corporations were so completely unified as to have lost any distinction or difference between the accounts and operations of both. I was informed that the reason for the incorporation of the Texas branch of the system was because there was a provision peculiar to State laws of the State of Texas, which allowed none but bona fide inhabitants of the State of Texas to hold property within the said State, and therefore it was necessary to incorporate the Texas Branch of the railroad in order to allow it to hold its own property. Beyond that purpose, there is no difference or distinction between the two corporations, and I was further informed that all of the agents of one corporation were the agents in the same position for the other corporation.

ROBERT M. RICHTER.

Sworn to before me this 16th day of August, 1911.

[SEAL.]

KATHARINE A. WOODS,

Notary Public, Kings County, No. 4629.

Cert. Filed in N. Y. County, No. 3225.

(Endorsed:) U. S. District Court, Southern District N. Y. Filed Sep. 23, 1911. John A. Shields, Clerk.

73 In the Circuit Court of the United States for the Southern District of New York.

ROBERT ALEXANDER, Plaintiff,

vs.

ST. LOUIS SOUTHWESTERN RY. CO. OF TEXAS, Defendant.

On Motion to Vacate Service and Dismiss.

NOYES, Circuit Judge:

It is clear that the service of the summons in this case was made upon the defendant as a foreign corporation in accordance with the provisions of Section 432 of the New York Code of Civil Procedure provided the cause of action arose in that state.

I am satisfied that the cause of action did arise within the State of New York. While the bill of lading upon which it is based was made in Texas it called for delivery in New York and was to be carried out to that extent in the latter state. Moreover the conditions of the bill of lading provide that claims for loss or damage "must be in writing to the carrier at the point of delivery". Service in accordance with the New York Statute would, however, be insufficient to confer jurisdiction upon this Court unless the defendant corporation was doing business within the State. Whether it were doing business cannot but be regarded as a very doubtful question. Still upon the authority of *Atlantic Coast Line R. Co. vs. Riverside Mills*, 219 U. S. 186, and *Pennsylvania Lumbermen's Ins. Co. vs. Meyer*, 197 U. S., 407, I have concluded to hold that under the 1906 amendment to the Interstate Commerce Act (34 Stat.

74 at Large, ch. 3591, Sec. 20) a railroad company receiving property for transportation from a point in one state to a point in another state beyond its own lines is doing business within the latter state to such extent as to confer jurisdiction upon the Federal Courts over a removed action for damage to such property commenced by the service of process in accordance with the laws of such State.

The motion to vacate service and dismiss for want of jurisdiction is denied.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Sep. 23, 1911. John A. Shields, Clerk.

75 In the Circuit Court of the United States, for the Southern District of New York.

ROBERT ALEXANDER, Plaintiff,
against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
Defendant.

Order.

The motion made by the defendant herein, to vacate and quash the service of the summons herein and dismiss this suit for want of jurisdiction over the defendant, having come on to be heard before me on the motion calendar of this Court, on the 16th day of August, 1911, and due deliberation having been had thereon;

Now, upon reading and filing the affidavit of F. H. Britton, Esq., duly verified on the 24th day of July, 1911, and the affidavit of Lawrence Greer, Esq., duly verified on the 4th day of August, 1911, and the affidavit of Arthur J. Trussell, Esq., duly verified on the 16th day of August, 1911, presented in support of the said motion, and upon reading and filing the affidavit of Phelan Beale, Esq., duly verified on the 16th day of August, 1911, the affidavit of Pierre J. Grillier, Esq., duly verified on the 11th day of July, 1911, the affidavit of Robert M. Richter, Esq., duly verified on the 11th day of July, 1911, and the affidavit of Robert M. Richter, Esq., duly verified on the 16th day of August, 1911, presented in opposition to said motion;

76 and also upon reading and filing the complaint herein; and after hearing Lawrence Greer, Esq., F. C. Nicodemus, Jr., Esq., and George S. Cooper, Esq., counsel for the defendant herein, appearing specially for the purpose of said motion and not otherwise, in support of said motion, and after hearing Phelan Beale, Esq., attorney for the plaintiff herein, in opposition to said motion; it is hereby

Ordered that the motion made by the defendant herein, to vacate and quash the service of summons herein and dismiss this suit for want of jurisdiction over the defendant, be and the same is hereby denied; and it is

Further Ordered that within twenty days after the entry of this order, and without waiving its right to contest the validity of the service of the summons and the jurisdiction of this Court over the defendant, the said defendant may enter its general appearance and plead, answer or demur to the complaint, or make such motion in respect thereof as it may be advised.

WALTER C. NOYES,

U. S. Circuit Judge.

The undersigned, attorneys for the respective parties herein, hereby consent to the entry of the foregoing order without
77 notice.

PHELAN BEALE,
Attorney for Plaintiff.
PIERCE & GREEK,
Attorneys for Defendant.

(Endorsed:) U. S. Circuit Court, Southern District N. Y., Filed Oct. 13, 1911, John A. Shields, Clerk.

78 In the Circuit Court of the United States for the Southern District of New York.

ROBERT ALEXANDER, Plaintiff,
against
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Defendant.

Answer.

The defendant, St. Louis Southwestern Railway Company of Texas, by leave of the court first had and obtained, reserving to itself the right to further contest the validity of service herein and the jurisdiction of this Court over the said defendant, appears generally herein, through Pierce & Greer, its attorneys, and for answer to the complaint herein respectfully shows and alleges as follows:

First. The defendant has no knowledge or information sufficient to form a belief as to the allegations contained in Paragraph First of the complaint, except that it admits upon information and belief that plaintiff was at all times mentioned in the complaint, and still is, a resident of the State of New York.

Second. The defendant admits the allegations contained in Paragraph Second of the complaint, except that it denies that it has an office in the City of New York.

Third. The defendant denies that it is engaged in the business of a common carrier of goods, wares and merchandise, for hire, from, to and through various states of the United States and in particular from the City of Waco, State of Texas, to New York City, and alleges that it is a common carrier incorporated under the laws of the State of Texas, and owns and operates certain lines of railroad situated wholly within the said State of Texas; but this defendant admits that it has established certain joint routes and joint rates with connecting carriers, whose lines of railroad are situated both within and without the State of Texas, for the transportation of goods, wares and merchandise originating at or destined to points upon the lines of railroad of this defendant within the State of Texas, and that in the transportation, by such joint routes and on such joint rates, of goods, wares and merchandise delivered to this defendant at points upon its lines of railroad within the State of Texas, this defendant issues and delivers through bills of lading in the form attached to the complaint herein and marked Schedule "A".

Fourth. The defendant denies any knowledge or information sufficient to form a belief as to the allegations contained in Paragraph Fourth of the complaint, excepting that it admits that it authorized to be made and delivered, and did cause to be delivered, to The Texas Packing Company a certain bill of lading, or transpor-

tation contract in writing, a copy whereof is annexed to the complaint and marked Schedule "A".

Fifth. The defendant denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in Paragraph Fifth of the complaint.

Sixth. The defendant denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in Paragraph Sixth of the complaint.

80 Seventh. The defendant denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in Paragraph Seventh of the complaint.

Eighth. The defendant denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in Paragraph Eighth of the complaint.

For a separate and distinct defense to the alleged cause of action set forth in the complaint herein this defendant denies that this Court has jurisdiction over the person of this defendant, and alleges that this defendant is a foreign corporation, organized and existing under the laws of the State of Texas, is not doing business within the State of New York, is not found within said State and is not amenable to service of process therein, and has not waived due service of process in this cause.

Wherefore the defendant herein demands judgment dismissing the complaint herein together with costs and disbursements of this action.

PIERCE & GREER,
Attorneys for Defendant.

O. & P. O. Address, No. 120 Broadway, Borough of Manhattan, City and State of New York.

81 **STATE OF NEW YORK,**
County of New York, ss:

Lawrence Greer, being duly sworn, deposes and says: that he is a member of the firm of Pierce & Greer, attorneys herein for the defendant, St. Louis Southwestern Railway Company of Texas; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to these matters he believes it to be true; that the reason why this verification is not made by the defendant and is made by the affiant is that the defendant is a foreign corporation and incapable of making an affidavit, having no officers within the State of New York.

LAWRENCE GREER.

Subscribed and sworn to before me this 2nd day of October, 1911.

[SEAL.]

CHARLES J. HERNLY,
Notary Public, Kings County.

Certificate filed in N. Y. Co.

(Endorsed:) Service of a copy of the within answer is hereby admitted this 2nd day of November, 1911. Phelan Beale, Atty. for Plaintiff.—U. S. Circuit Court, Southern District N. Y., Filed Nov. 2, 1911, John A. Shields, Clerk.

82

(Copy.)

Extract from Minutes of Trial.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, held at the United States Court Rooms in the Borough of Manhattan, in the City of New York, on Thursday the 13th day of June, in the Year of our Lord one thousand nine hundred & twelve.

Present: The Honorable George C. Holt, District Judge.

ROBERT ALEXANDER

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS.

Now comes the plaintiff by Phelan Beale, Esq., his attorney and moves the trial of this cause. Likewise comes the defendant by William Mann, Esq., its attorney.

Thereupon a jury is duly impaneled and sworn and the cause proceeds to trial. After hearing the evidence for the respective parties, the arguments of counsel, and the charge of the Court, the jury, on Saturday, the 15th day of June, 1912, retire in charge of an officer duly qualified to attend them and upon their return say they find a verdict for the plaintiff for \$2299.32.

Ordered that the Clerk compute the interest on said verdict from Dec. 1, 1910.

Defendant's motion to set aside the verdict denied.

Execution stayed sixty days after entry of judgment.

An extract from the minutes.

[L. s.] (Sgd.) THOMAS ALEXANDER, Clerk.

83 In the District Court of the United States for the Southern District of New York.

ROBERT ALEXANDER, Plaintiff,

against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Defendant.

Judgment.

The issues in the above entitled action having come on for trial before Hon. George C. Holt, one of the Judges of this Court, and a

jury of this Court, having returned a verdict in favor of the plaintiff herein against the defendant herein for the sum of Two Thousand and Five Hundred and Thirteen Dollars and Ninety-two Cents (\$2513.92), as will appear more fully by the abstract of the minutes of the said trial now on file in the office of the Clerk of this Court, and the costs of the plaintiff having been taxed at the sum of Ninety-three Dollars and Eighty cents (\$93.80),

Now, on motion, of Phelan Beale, attorney for the plaintiff herein, it is hereby

Adjudged, that the plaintiff, Robert Alexander, do hereby recover of the St. Louis Southwestern Railway Company of Texas, the defendant herein, the sum of Two Thousand Five Hundred and Thirteen Dollars and Ninety-two cents (\$2513.92) together with Ninety-three Dollars and Eighty cents (93.80), costs as taxed, making in all the sum of Two Thousand Six Hundred and Seven Dollars and Seventy-two cents (2607.72), and that the said plaintiff have execution therefore.

Judgment signed and entered this 27th day of June, 1912.

THOMAS ALEXANDER, Clerk.

(Endorsed:) U. S. District Court, S. D. of N. Y., Filed Jun- 27, 1912, 11:30 A. M.

84 In the District Court of the United States for the Southern District of New York.

ROBERT ALEXANDER, Plaintiff,
'against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
Defendant.

A Stipulation.

It is stipulated and agreed by and between the attorneys for the parties to the above entitled action that on the trial of the within issues of fact before a jury the defendant called certain witnesses to testify to the effect that certain requirements laid down in the bill of lading in reference to refrigerating the shipment in transit were duly performed, and that such witnesses were employed by the connecting carriers of the defendant as hereinafter appears and that the performance of such conditions referred to herein were had at certain places on the lines of the connecting carriers of the defendant as likewise appears.

Witnesses.	Performance made at	On the lines of and employed by
W. B. Greenwood, Jr.	Texarkana, Ark.	St. Louis Southwestern Railway Co.
H. C. Larew.	Pinebluff, Ark.	St. Louis Southwestern Railway Co.
H. C. McGraw.	Jonesborough, Ark.	St. Louis Southwestern Railway Co.
J. G. Jones.	Dupo, Ill.	St. Louis Southwestern Railway Co.
Henry Thelford.	Indianapolis, Ind.	C. C. C. & St. L. R. Co.
John Jos. Bundschup.	New York City, N. Y.	West Shore Railroad Co.
Geo. Yespille.	New York City, N. Y.	West Shore Railroad Co.

Dated, New York City, June 27th, 1912.

PHELAN BEALE,
Attorney for Plaintiff.
PIERCE & GREER,
Attorneys for Defendant.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Jul. 1, 1912.

85 In the District Court of the United States for the Southern District of New York.

ROBERT ALEXANDER, Plaintiff,
against
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
Defendant.

Certificate.

Certificate by the Honorable George C. Holt, one of the Judges of the District Court of the United States for the Southern District of New York, Second Circuit, Pursuant to §238 of the Judicial Code.

I, George C. Holt, one of the Judges of the District Court of the United States for the Southern District of New York, Second Circuit, hereby certify to the Supreme Court of the United States that the issues in the above-entitled action came on for trial in the above-entitled Court on the 13th day of June, 1912.

That prior to the trial of said action the defendant duly moved at a term of the Circuit Court for an order quashing the service of summons herein and dismissing this action for want of personal jurisdiction over the defendant, and that on the 13th day of October, 1911, an order was entered in said Circuit Court by direction of the Honorable Walter C. Noyes, Circuit Judge, denying said motion to quash service and dismiss said action for want of personal jurisdiction over the defendant.

That at the opening of the trial hereinbefore mentioned, and at the proper subsequent stages of said trial, the defendant duly renewed its motion to quash service herein and to dismiss said action

for want of personal jurisdiction, and said motion as thus renewed was denied upon authority of said prior order entered by direction of Circuit Judge Noyes.

That thereafter the issues of fact raised by the pleadings having been submitted to a jury and a verdict having been returned in favor of the plaintiff and against the defendant, a final judgment was thereafter and on the 27th day of June, 1912, entered in favor of the plaintiff and against the defendant in the amount of \$2,299.32, with interest from December 1, 1910, amounting to \$2,214.66.

I further certify that the defendant duly filed in this Court its petition praying that a writ of error may issue out of the Supreme Court of the United States under the provisions of §328 of The Judicial Code, to review said judgment, and an order allowing such writ of error has been duly entered.

I therefore, in accordance with the provisions of §328 of The Judicial Code, being the Judiciary Act of Congress of the United States approved March 3, 1911, do hereby certify to the Supreme Court of the United States that the jurisdiction of this Court over the person of the defendant, St. Louis Southwestern Railway Company of Texas, is in issue, and that the following question of jurisdiction is certified to the Supreme Court of the United States for decision.

87 The question whether the defendant by reason of its acceptance of a freight shipment for transportation from Waco, Texas, beyond its lines of railroad to New York City, under the terms of a bill of lading annexed to the plaintiff's complaint and issued by the defendant conformably to Section 20 of the Act of Congress approved February 4, 1837, as amended by the Act of Congress approved January 29, 1906, and generally known as the Carmack Amendment to the Hepburn Act, is doing business within the State of New York so as to be amenable to service of process within said State; whether the defendant by reason of its acceptance in the usual and customary course of interstate commerce of a freight shipment for transportation as and in the manner hereinbefore recited rendered itself amenable to service of process within the State of New York, made by leaving the same with a member of the Board of Directors of the defendant residing within the State of New York but not representing the defendant within the State of New York in respect of any business conducted in said State; and whether the motion of the defendant to quash the service of summons attempted to be made herein and to dismiss the cause for want of jurisdiction over the person of the defendant should have been granted.

Dated at New York, June 29th, 1912.

GEO. C. HOLT,
United States District Judge.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Jul. 1, 1912.

Petition for Writ of Error.

In the District Court of the United States for the Southern District of
New York.

At Law.

ROBERT ALEXANDER, Plaintiff,
against
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
Defendant.

Petition for Writ of Error.

Now comes St. Louis Southwestern Railway Company of Texas,
defendant herein, and says:

That on or about the 27th day of June, 1912, the District Court
of the United States for the Southern District of New York entered
a judgment herein in favor of the plaintiff and against this defend-
ant in which judgment and the proceedings had prior thereto in this
cause certain errors were committed to the prejudice of this defend-
ant, all of which will more in detail appear from the assignment of
errors which is filed with this petition.

Wherefore this defendant prays that a writ of error may issue
in this behalf out of the Supreme Court of the United States, for
the correction of errors so complained of, and that a transcript of the
material portions of the record, proceedings and papers in this cause,
as specified in a stipulation of counsel filed herein under Rule Eight
of the Supreme Court, duly authenticated, may be sent to the said
Supreme Court of the United States.

PIERCE & GREER,
Attorneys for the Defendant.

Office & Postoffice Address, No. 37 Wall Street, Borough of Man-
hattan, City of New York.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Jul. 1,
1912.

89 In the District Court of the United States for the Southern District of New York.

At Law.

ROBERT ALEXANDER, Plaintiff,
against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
Defendant.

Order Allowing Writ of Error and Supersedeas.

This 29th day of June, 1912, comes the defendant, by Pierce & Greer, its attorneys, and files herein and presents to the Court its petition, praying for the allowance of a writ of error and an assignment of errors intended to be urged by it, praying also that a transcript of the material portions of the record, proceedings and papers upon which the judgment herein was rendered, as specified in a stipulation of counsel filed herein under Rule Eight of the Supreme Court, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises. Upon consideration whereof the Court does allow the writ of error upon the defendant giving bond, according to law, in the sum of Thirty-five hundred (\$3,500#) Dollars, which shall operate as a supersedeas bond.

GEO. C. HOLT,
District Judge.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Jul. 1, 1912.

90 *Assignments of Error.*

In the District Court of the United States for the Southern District New York.

At Law.

ROBERT ALEXANDER, Plaintiff,
against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
Defendant.

Assignment of Errors.

Now comes the said defendant, St. Louis Southwestern Railway Company of Texas, by Pierce & Greer, its attorneys, and says that in the record, proceedings and orders and in the final decree and judgment entered thereon whereby the plaintiff recovered judgment for the amount demanded in his complaint there is manifest error,

and that the defendant has been denied its just rights by said proceedings and decree; and the defendant hereby assigns and sets out the following errors, namely:

1. The Court erred in holding that the defendant by reason of its acceptance of a freight shipment for transportation from Waco, Texas, beyond its lines of railroad to New York City, under the terms of a bill of lading annexed to the plaintiff's complaint and issued by the defendant conformably to §20 of the Act of Congress approved February 4, 1887, as amended by the Act of Congress approved January 29, 1906, and generally known as the Carmack Amendment to the Hepburn Act, is doing business within the State of New York so as to be amenable to service of process within said State.

2. The Court erred in holding that the defendant by reason of its acceptance in the usual and customary course of interstate commerce of a freight shipment, for transportation as and in the manner hereinbefore recited, rendered itself amenable to service of process within the State of New York, made by leaving the same with a member of the Board of Directors of the defendant residing within the State of New York but not representing the defendant within the State of New York in respect of any business conducted in said State.

3. The Court erred in denying the motion of the defendant to quash the service of summons attempted to be made herein and to dismiss the cause for want of jurisdiction over the person of the defendant.

4. The Court erred in entering a judgment against the defendant which if enforced against the defendant in accordance with its terms would by reason of the absence of personal jurisdiction over the defendant constitute a taking of its property without due process of law.

Dated New York, June 28, 1912.

PIERCE & GREER,
Attorneys for the Defendant.

Office & Post Office Address, No. 37 Wall Street, Borough of Manhattan, City of New York.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Jul. 1, 1912.

92 In the Supreme Court of the United States, on Appeal from the District Court of the United States for the Southern District of New York.

ROBERT ALEXANDER, Plaintiff,
against

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
Defendant.

Know all men by these presents: That we, St. Louis Southwestern Railway Company of Texas, as principal, and the Fidelity and De-

posit Company of Maryland, as surety, are held and firmly bound unto Robert Alexander, in the sum of Thirty-five Hundred Dollars (\$3500), lawful money of the United States, to be paid to the said Robert Alexander his legal representatives or assigns; for which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this first day of July, nineteen hundred and twelve.

Whereas, the above named St. Louis Southwestern Railway Company of Texas, defendant in the above entitled suit, is about to prosecute an appeal to the United States Supreme Court to reverse a judgment of the District Court of the United States for the Southern District of New York, in the above entitled action entered in the 27th day of June, 1912, adjudging that the plaintiff, Robert Alexander do recover of the St. Louis Southwestern Railway Company of Texas the sum of Two thousand six hundred and seven and 72/100 dollars (\$2,607.72).

And the said St. Louis Southwestern Railway Company of Texas having obtained the allowance of the appeal and filed a copy thereof in the Clerk's office of said Court, and a citation directed to the said Robert Alexander, citing and admonishing him to be and appear at a Supreme Court of the United States at Washington within thirty days of the date herein.

Now therefore, the condition of this obligation is such, that if the above bounden St. Louis Southwestern Railway Company of Texas, defendant and appellant in this suit, shall prosecute its said appeal to effect, and answer all costs and damages if it shall fail to make good its appeal, and if the said St. Louis Southwestern Railway Company of Texas, defendant and appellant in said suit, shall, in case the judgment appealed from or any part thereof is affirmed, or the appeal is dismissed, pay the sum recovered or directed to be paid by the judgment, or the part thereof as to which it is affirmed, then this obligation to be void; otherwise to remain in full force and virtue.

ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY OF TEXAS,
By PIERCE & GREER, *Attorneys*;
FIDELITY AND DEPOSIT COMPANY OF
MARYLAND,

[SEAL.] By HUGH M. ALLWOOD, *Attorney in Fact*.

Attest:

JAMES R. KINGSLEY,
Attorney in Fact.

(Certificate and statement of Surety Company and affidavit of Lawrence Greer attached.)

(Endorsed:) U. S. District Court, S. D. of N. Y., Filed Jul-1, 1912.

94 In the District Court of the United States for the Southern District of New York.

ROBERT ALEXANDER, Plaintiff,
against
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
Defendant.

Stipulation under Rule 8 of the Supreme Court.

It is hereby agreed and stipulated by and between Phelan Beale, attorney for the plaintiff herein, and Pierce & Greer, attorneys for the defendant herein, that the complete record of this action on appeal to the honorable Supreme Court of the United States for the purpose of determining the jurisdiction of the District Court of the United States in this action over the person of the defendant, shall consist of the following papers:

1. Summons and complaint.
2. Petition and bond on removal.
3. Motion made by the defendant to vacate and quash the service of the summons and dismiss the cause for want of jurisdiction with supporting affidavits, omitting Exhibit A from affidavit of F. H. Britton, together with opposing affidavits, omitting, however, Exhibit B from affidavit of Phelan Beale.
4. Opinion of Judge Noyes relative to this motion.
5. Order denying said motion.
6. Answer of defendant.
7. Stipulation as to certain facts.
8. Clerk's Extract of Minutes.
9. Judgment.

Dated, New York, June 27th, 1912.

PHELAN BEALE,
Attorney for Plaintiff.
PIERCE & GREER,
Attorneys for Defendant.

(Endorsed:) U. S. District Court, S. D. of N. Y., Filed Jul- 1, 1912.

95 By the Honorable George C. Holt, one of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit. To Robert Alexander, Greeting:

You are hereby cited and admonished to be and appear before a Supreme Court of the United States, to be holden at Washington, on the 27th day of July 1912, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein St. Louis Southwestern Railway Company of Texas is plaintiff-in-error and you are defendant-in-error to show cause, if any there be, why the judgment in said

writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 29th day of June, in the year of our Lord One Thousand Nine Hundred and twelve, and of the Independence of the United States the One Hundred and Thirty-sixth.

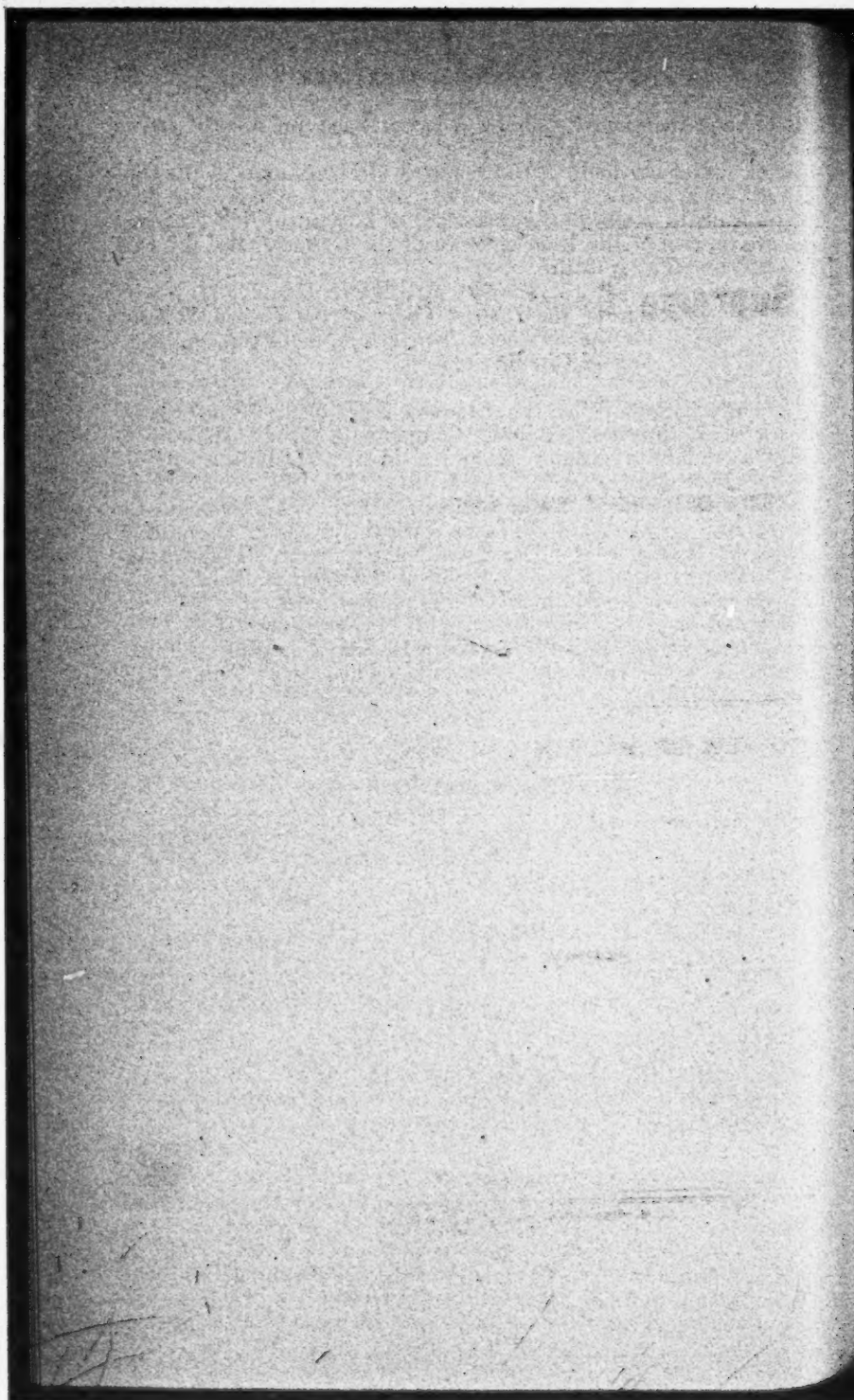
GEO. C. HOLT,

*Judge of the District Court of the United States
for the Southern District of New York, in the
Second Circuit.*

[Endorsed:] Law 7/73. The Supreme Court of the United States. St. Louis Southwestern Railway Company of Texas, plaintiff-in-error vs. Robert Alexander, defendant-in-error. Citation. U. S. District Court, S. D. of N. Y. Jul-1, 1912. M.

[Endorsed:] United States Supreme Court. St. Louis Southwestern Railway Company of Texas, Plaintiff in Error, (Defendant below) vs. Robert Alexander, Defendant in Error, (Plaintiff below). Transcript of Record. Error to the District Court of the United States for the Southern District of New York.

Endorsed on cover: File No. 23,313. S. New York D. C. U. S. Term No. 738. St. Louis Southwestern Railway Company of Texas, plaintiff in error, vs. Robert Alexander, Filed July 30th, 1912. File No. 23,313.



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Office Supreme Court, U. S.
FILED.

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JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1912.

—
No. 788.
—

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
OF TEXAS,

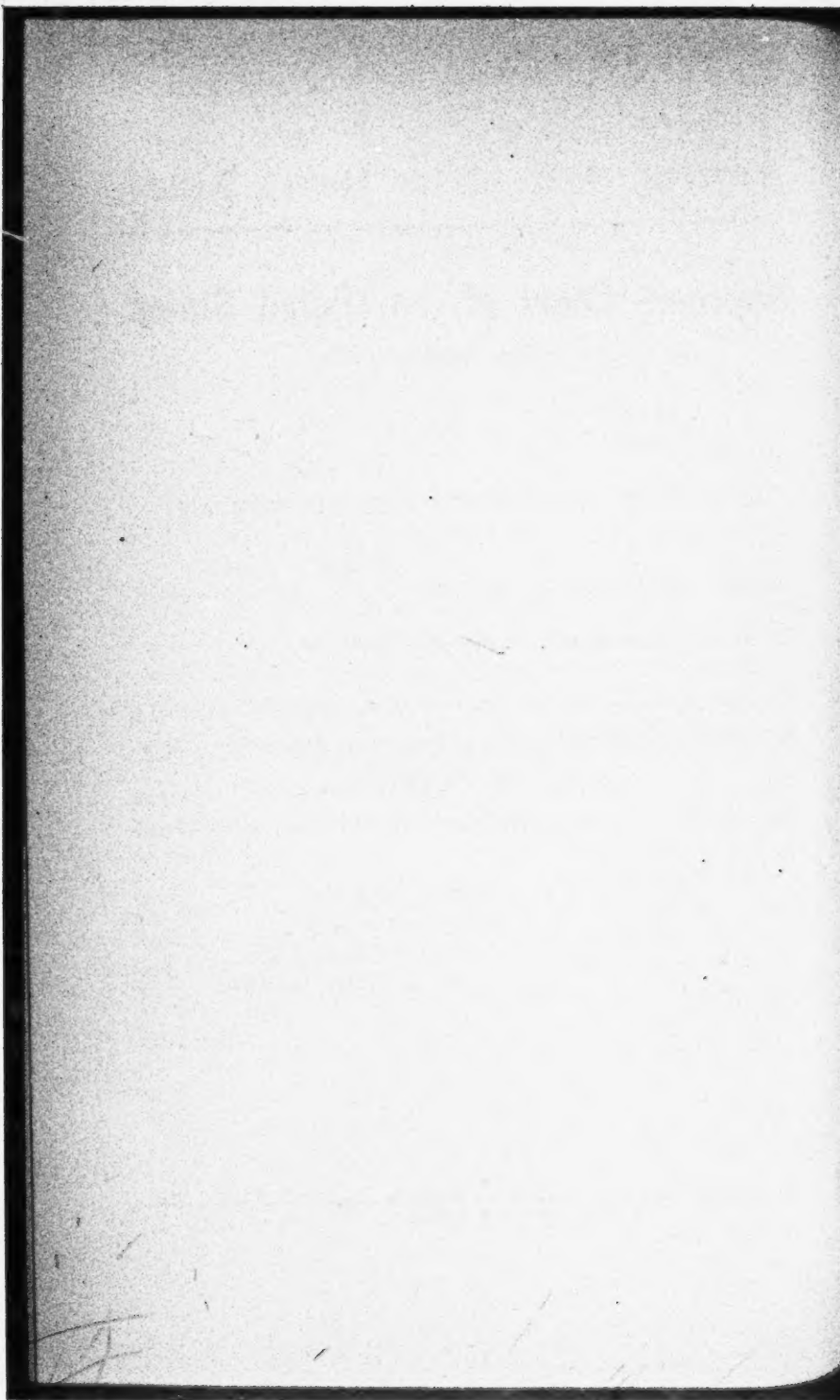
Plaintiff in Error,
against

ROBERT ALEXANDER.

—
NOTICE OF MOTION AND MOTION TO ADVANCE
CAUSE ON CALENDAR.
—

LAWRENCE GREER,
F. C. NICODEMUS, JR.,
Attorneys and Counsel for the Plaintiff in Error,
No. 37 WALL STREET,
New York,
New York.

—
C. G. BURGOTER, 73 to 75 Spring Street, New York.
—



Supreme Court of the United States.

OCTOBER TERM, 1912. No. 738.

ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY OF TEXAS,
Plaintiff in error,

AGAINST

ROBERT ALEXANDER.

Notice of Motion to Advance Cause on Calendar.

TO ROBERT ALEXANDER, Defendant in error; and
PHELAN BEALE, Esq., Attorney for said Defendant in error:

YOU AND EACH OF YOU PLEASE HEREBY TAKE NOTICE that the above-named plaintiff in error, St. Louis Southwestern Railway Company of Texas, a corporation, by its attorneys, will, at the courtroom of the Supreme Court of the United States, in the City of Washington, District of Columbia, on Monday, the 2d day of December, 1912, at the hour of eleven o'clock A. M. of said day, or as soon thereafter as agreeable to said Court, and counsel can be heard, move the above-entitled Court to advance the above-entitled cause on the calendar pursuant to Rule 32 of said Court. A full, true and correct copy of the motion herein referred to is attached hereto and served herewith.

Dated New York City, November 11, 1912.

LAWRENCE GREER,
F. C. NICODEMUS, JR.,
Attorneys and Counsel for the Plaintiff in error,
No. 37 Wall Street,
New York,
New York.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1912. No. 738.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Plaintiff in error, AGAINST ROBERT ALEXANDER.	}
--	---

Motion to Advance Cause on Calendar.

Comes now the above-named plaintiff in error, St. Louis Southwestern Railway Company of Texas, a corporation, appearing by its counsel, and respectfully moves that the above-entitled cause be advanced on the calendar under Rule 32 of the Rules of the Supreme Court, for the reasons hereinafter stated :

I.

That the record in this case shows, in brief, that on July 10, 1910, the above-entitled cause was attempted to be commenced in the Supreme Court of the State of New York by the service of summons in said cause, with verified complaint thereto annexed, made by delivery of the same to Lawrence Greer as a director of said St. Louis Southwestern Railway Company of Texas. That said cause was thereafter removed into the Circuit Court of the United States for the Southern District of New York. That thereafter a motion was made by said plaintiff in error before said last-named Court to vacate and quash service of the above summons and to dismiss said suit for want of jurisdiction over the person of said plaintiff in error. That the plaintiff in error contended in support of said motion, and still contends, that said service of summons was invalid and of no effect, for the reason that said St. Louis Southwestern Railway Company

of Texas is a foreign corporation organized and existing under the laws of Texas, is not doing business within the State of New York, is not found within said state and is not amenable to service therein and has not waived due service of summons in said cause by voluntary appearance or otherwise.

II.

That the defendant in error contended, and still contends, that the plaintiff in error was and is doing business in the State of New York by means of duly authorized agents, so as to make said plaintiff in error amenable to service of process within said state made by service of summons upon a director of said plaintiff in error resident within the State of New York.

III.

That the Circuit Court of the United States for the Southern District of New York denied the motion of plaintiff in error to vacate and quash service of summons and to dismiss for want of jurisdiction, and held that the plaintiff in error, by reason of Section 20 of the Act of Congress, approved February 4, 1887, as amended by the Act of Congress, approved January 29, 1906, and generally known as the Carmack Amendment to the Hepburn Act, should be held to be doing business within the State of New York so as to make it amenable to service of process within said State, said Court stating, however, in its opinion, that the question whether the plaintiff in error was doing business within said State could not but be regarded as very doubtful. That thereafter the above-entitled cause came on for trial in the United States District Court for the Southern District of New York, and the plaintiff in error at the opening of said trial and at the proper subsequent stages thereof duly renewed its motion to quash service and to dismiss for want of personal jurisdiction, and said motion as thus renewed from time to time was denied on the authority of the prior decision and order of the Circuit Court. That a verdict was returned in favor of the defendant in error herein, and a final judg-

ment was thereupon entered in favor of said defendant in error and against the plaintiff in error for the sum of \$2,607.72. That the plaintiff in error thereafter duly filed in the District Court of the United States for the Southern District of New York its petition praying that a writ of error issue out of the Supreme Court of the United States under and by virtue of the provisions of § 238 of the Judicial Code, being the Judiciary Act of Congress of the United States approved March 3, 1911, to review said judgment, and an order allowing such writ of error was duly entered.

IV.

That the sole and only question involved on this appeal is the question of the jurisdiction of the District Court of the United States and particularly of said District Court of the United States for the Southern District of New York, over the person of said plaintiff in error.

V.

That the jurisdictional question has been duly certified in the above-entitled cause, on this writ of error, by the Honorable GEORGE C. HOLT, as Judge of the District Court of the United States in and for the Southern District of New York.

VI.

That a construction, in this aspect, of Section 20 of the Act of Congress approved February 4, 1887, as amended by the Act of Congress approved January 29, 1906, and generally known as the Carmack Amendment to the Hepburn Act, has not before been sought from this Court. That a number of cases presenting the same question and in which the same defense is interposed as in the cause at bar are being held in abeyance awaiting the decision of this Court on the question of jurisdiction here submitted. That the jurisdictional question here involved is one of considerable importance and deserving of as reasonably quick determination as possible,

agreeable to the pleasure of this Honorable Court, and as the sole question is a jurisdictional one, this motion is made, under the law and pursuant to Rule 32, to advance said cause on the calendar of this Court.

WHEREFORE, it is respectfully prayed that this cause be advanced upon the calendar of this Court, and that any other order or orders be made in the premises which may be equitable.

Dated at New York City, November 11, 1912.

LAWRENCE GREER,

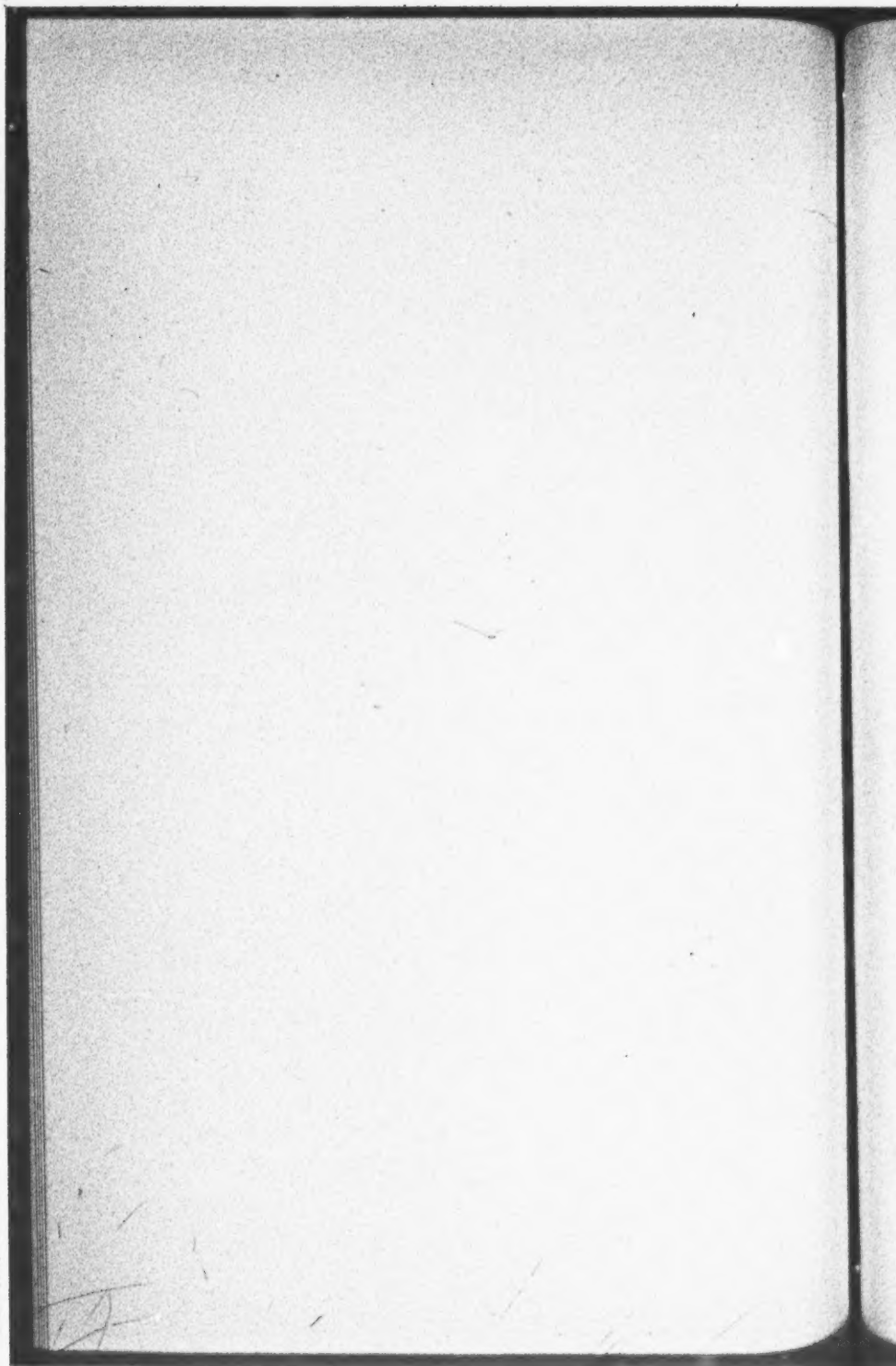
F. C. NICODEMUS, JR.,

Attorneys and Counsel for the Plaintiff in error,

37 Wall Street,

New York,

New York.



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JAMES H. MCKENNEY,

CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1912.

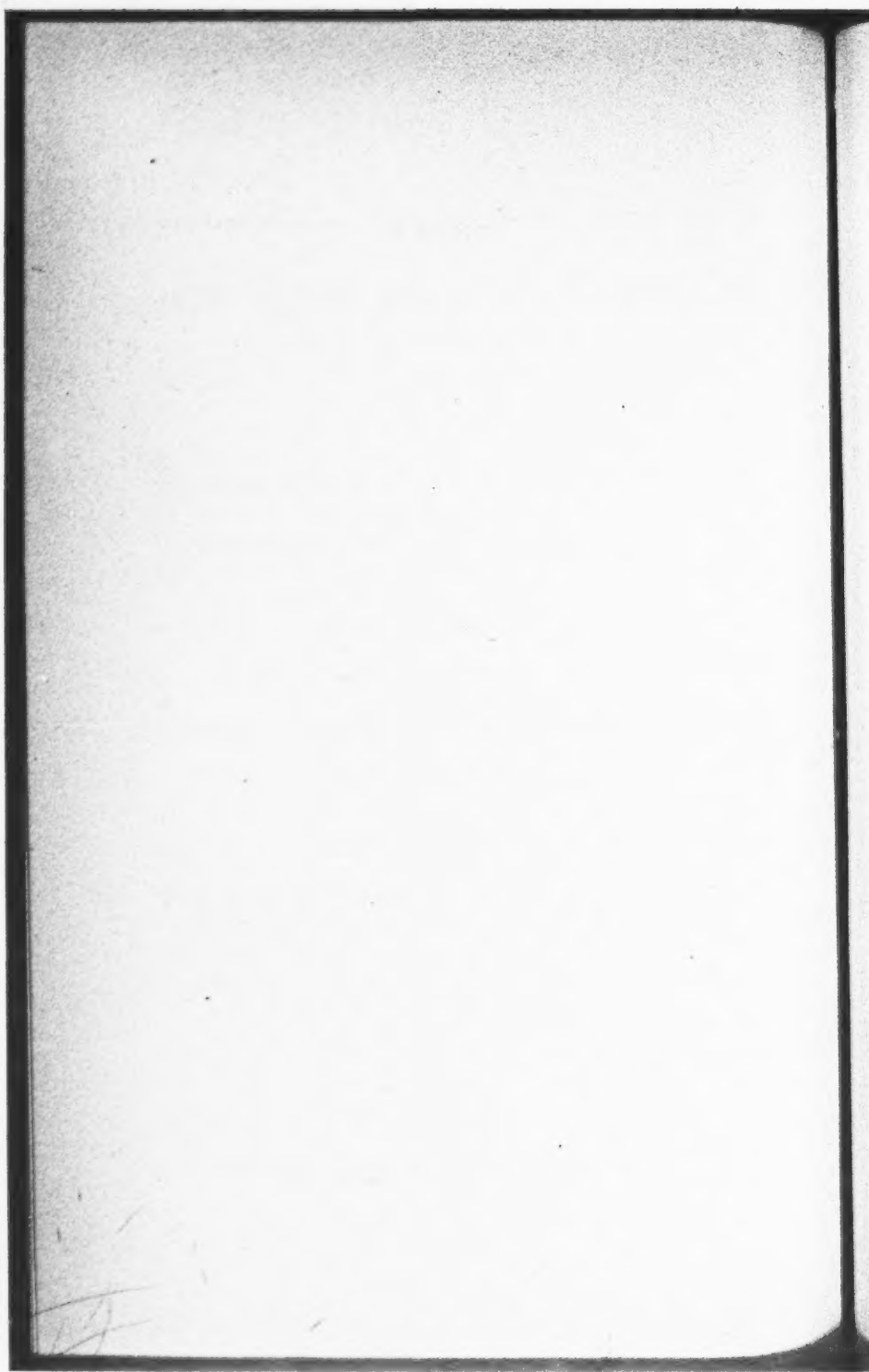
No. 788.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
OF TEXAS,
Plaintiff in Error,
against

ROBERT ALEXANDER.

BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

LAWRENCE GREER,
F. C. NICODEMUS, JR.,
Counsel for Plaintiff in Error,
No. 37 WALL STREET,
New York,
New York.



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Supreme Court of the United States,

OCTOBER TERM, 1912. No. 738.

ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY OF TEXAS,
Plaintiff in Error,

AGAINST

ROBERT ALEXANDER.

**BRIEF OF COUNSEL FOR THE PLAINT-
IFF IN ERROR.**

Statement.

(a) *The purpose of the writ of error.*

This is a writ of error to review a judgment at law against St. Louis Southwestern Railway Company of Texas, the plaintiff in error, entered in the District Court of the United States for the Southern District of New York (Rec., p. 1).

(b) *The writ of error direct to this Court under Section 238 of the Judiciary Act.*

The writ of error has been taken from the District Court direct to this Court under Section 238 of the Act of Congress approved March 3, 1911, commonly known as the Judiciary Act, the jurisdiction of the District Court over the plaintiff in error having been in issue, and this question of jurisdiction alone having been certified to this Court. The question of the jurisdiction of

the District Court over the plaintiff in error involves an issue as to whether the plaintiff in error, at the time process in the action was attempted to be served upon it, was doing business within the State of New York so as to be amenable to service of process therein (Record, pp. 51, 52). Inasmuch as this Court has recently reaffirmed earlier decisions holding such a question of jurisdiction to be within the purview of Section 5 of the Act of March 3, 1891, the language of which has been embodied without material change or amendment in the Act of March 3, 1911, it is assumed that no question exists as to this Court's direct appellate jurisdiction to review the question certified by the District Court (*Herndon-Carter Company vs. Norris, Son and Company*, 224 U. S. 496).

(c) *The question certified by the District Court.*

In the language of the certificate framed by the District Court, the question of jurisdiction presented by the writ of error is

"whether the defendant by reason of its acceptance of a freight shipment for transportation from Waco, Texas, beyond its lines of railroad to New York City, under the terms of a bill of lading annexed to the plaintiff's complaint and issued by the defendant conformably to Section 20 of the Act of Congress approved February 4, 1887, as amended by the Act of Congress approved January 20, 1906, and generally known as the Carmack Amendment to the Hepburn Act, is doing business within the State of New York so as to be amenable to service of process within said State; whether the defendant by reason of its acceptance in the usual and customary course of interstate commerce of a freight shipment for transportation, as and in the manner hereinbefore recited, rendered itself amenable to service of process within the State of New York, made by leaving the same with a member of the board of directors of the defendant residing within the State of New York but not representing the defendant within the State of New York in respect of any business conducted in said state; and whether the motion of the defendant to quash the service of summons, attempted to be made

herein, and to dismiss the cause for want of jurisdiction over the person of the defendant, should have been granted " (Record, pp. 48, 49).

(d) *The facts upon which the question of jurisdiction arises.*

The facts upon which the question of jurisdiction thus certified by the District Court arises are undisputed.

The plaintiff in error is a corporation organized under the laws of the State of Texas, and owns and operates lines of railway situated wholly within the State of Texas. No substantial part of its corporate business is transacted outside of the State of Texas excepting in so far as such business may be incidental to the use and operation of its lines of railway in interstate commerce as parts of through routes for the transportation of passengers and freight. None of its property has a permanent or transient *situs* within the State of New York excepting such of its rolling stock as may temporarily pass into the State of New York in the movement of interstate commerce and under the control of other carriers. The plaintiff in error has no bank account in the State of New York, maintains no office and employs no agents within the State of New York, and none of its officers is located or resides within the State of New York. The majority of the members of its board of directors reside within the State of Texas and all of the important meetings of the board are held within the State of Texas, and no meeting of the board (if any were ever there held) has been held within the State of New York for many years. Mr. William H. Taylor and Mr. Lawrence Greer, each a resident of the State of New York, are members of the board of directors, but neither is an official representative of the plaintiff in error within the State of New York. As required by the laws of the State of Texas an office for the transfer of the stock of the plaintiff in error is maintained within the State of Texas, and, although a contrary statement seems to have appeared in Poor's Manual or some other unofficial publication, no such

office is maintained within the State of New York. The St. Louis Southwestern Railway Company, a corporation of the State of Missouri, is the owner of a majority of the capital stock of the plaintiff in error, and, as the dominant stockholder, has a controlling voice in the management and conduct of its affairs. The lines of railway owned by the two corporations, which are connected and continuous, are operated in close affiliation, and in certain instances corresponding offices in the two corporations are held by the same individual. The two corporations are nevertheless entirely distinct and autonomous. The plaintiff in error has designated no agent within the State of New York upon whom process may be served or by whom process may be accepted on its behalf, and no such designation is on file in the office of the Secretary of State (Record, pp. 14-41).

(e) Transaction upon which action is founded.

On November 25, 1910, the plaintiff in error received from The Texas Packing Company, for shipment over its lines of railway and those of connecting or succeeding carriers, to a point within the State of New York, certain perishable freight consigned to the order of the consignor. As part of the same transaction the plaintiff in error delivered to The Texas Packing Company an order bill of lading acknowledging receipt of the property, consigned and destined as indicated above, and agreeing to carry the same "to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination," it being further agreed by the terms of the bill of lading "as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof),

and which are agreed to by the shipper and accepted for himself and his assigns." Among the conditions endorsed upon the back of the bill of lading is the following:

"Sec. 2. In issuing this bill of lading this company agrees to transport only over its own line, and *except as otherwise provided by law* (our italics), acts only as agent with respect to the portion of the route beyond its own line."

As appears upon its face, the bill of lading is in the standard form approved by the Interstate Commerce Commission by Order No. 87, dated June 27, 1908.

The property covered by this bill of lading was subsequently delivered in a damaged condition upon the consignor's order at a point within the State of New York (Record, pp. 3-7).

(f) *Attempt to institute action in Supreme Court of State of New York.*

On July 10, 1911, the defendant in error, as endorsee of all rights of The Texas Packing Company under the bill of lading above described, attempted to commence this action in the Supreme Court of the State of New York for an alleged breach of the contract of carriage embodied in said bill of lading, by delivering a copy of a summons, issued out of said Court, with a verified complaint thereto attached, to Mr. Lawrence Greer, one of the two directors of the plaintiff in error, residing in the State of New York. These documents were delivered to Mr. Greer after the defendant in error had made a due and diligent search for but had been unable to find within the State of New York any officer of the plaintiff in error of the character specified in Subdivision 1 of Section 432 of the New York Code of Civil Procedure* (Record, pp. 4-6; 37-40).

* § 432. (Am'd, 1877, 1908, 1909.) *How personal service of summons made upon a foreign corporation.*

"Personal service of the summons upon a defendant, being a

(9) Removal of cause into the Circuit Court, and motion to quash service and dismiss for want of jurisdiction.

On July 24, 1911, the plaintiff in error duly filed its petition and bond for removal of the cause into the Circuit Court of the United States for the Southern District of New York, and within the prescribed period thereafter a transcript of the record was duly filed in the Circuit Court (Record, pp. 7-12, 19).

After the cause had been thus transferred to the Circuit Court, the plaintiff in error, appearing specially for the purpose of the motion and not otherwise, submitted to the Circuit Court its motion to vacate and quash the attempted service of summons and to dismiss the cause "for want of jurisdiction over the person of St. Louis Southwestern Railway Company of Texas, for the reason that said St. Louis Southwestern Railway Company of Texas is a foreign corporation, organized and existing under the laws of the State of Texas, is not doing business within the State of New York, is not found within said State and is not amenable to service therein, and has not waived due service of summons herein by voluntary appearance or otherwise" (Record, pp. 12-14).

This motion was brought on for argument before Circuit Judge NOYES, and on September 23, 1911, an opinion was filed by the Circuit Judge, in which the learned Judge, after stating that process was served

foreign corporation, must be made by delivering a copy thereof, within the State, as follows:

"1. To the president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary; or, if the corporation lacks either of those officers, to the officer performing corresponding functions, under another name.

"2. To a person designated for the purpose as provided in section 16 of the General Corporation Law.

"3. If such a designation is not in force, or if neither the person designated, nor an officer specified in subdivision first of this section, can be found with due diligence, and the corporation has property within the State, or the cause of action arose therein; to the cashier, a director, or a managing agent of the corporation, within the State.

"4."

in accordance with the statutory procedure obtaining in the State of New York, said :

"Service in accordance with the New York Statute would, however, be insufficient to confer jurisdiction upon this Court unless the defendant corporation was doing business within the State. Whether it were doing business cannot but be regarded as a very doubtful question. Still upon the authority of *Atlantic Coast Line R. Co. vs. Riverside Mills*, 219 U. S., 186, and *Pennsylvania Lumbermen's Ins. Co. vs. Meyer*, 197 U. S., 407, I have concluded to hold that under the 1906 amendment to the Interstate Commerce Act (34 Stat. at Large, ch. 3591, Sec. 20) a railroad company receiving property for transportation from a point in one state to a point in another state beyond its own lines is doing business within the latter state to such extent as to confer jurisdiction upon the Federal Courts over a removed action for damage to such property commenced by the service of process in accordance with the laws of such State" (Record, p. 42).

An order was thereupon filed by direction of the Circuit Judge, denying the motion to vacate and quash the service of summons and to dismiss the cause for want of jurisdiction over the plaintiff in error, and authorizing the plaintiff in error, within twenty days thereafter and without waiving its right to contest the validity of the service of summons and the jurisdiction of the Court over its person, to enter a general appearance and plead, answer or demur to the complaint, or make such motion in respect thereof as it might be advised (Record, pp. 43, 44).

(4) *Trial on the merits and entry of final judgment.*

After an answer had been interposed by the plaintiff in error the action was brought on for trial in the District Court of the United States for the Southern District of New York (the Judiciary Act of Congress abolishing the Circuit Court having in the meantime become effective), and at the opening of the trial as well as at the proper subsequent stages thereof the plaintiff in error duly renewed its motion to vacate and

quash service and to dismiss the action for want of personal jurisdiction, and the motion as thus renewed was denied upon authority of the prior order filed by direction of Circuit Judge NOYES; and the issues of fact were submitted to a jury. On June 15, 1912, the jury returned a verdict against the plaintiff in error for the sum of \$2,299.32, upon which final judgment was entered against the plaintiff in error for the sum of \$2,607.72 (Record, pp. 46-49).

(i) *Petition for writ of error, and assignment of errors.*

On June 29, 1912, the plaintiff in error presented to the District Court its petition praying for the allowance of a writ of error directed to this Court, assigning the following errors :

1. THE COURT ERRED IN HOLDING THAT THE DEFENDANT BY REASON OF ITS ACCEPTANCE OF A FREIGHT SHIPMENT FOR TRANSPORTATION FROM WACO, TEXAS, BEYOND ITS LINES OF RAILROAD TO NEW YORK CITY, UNDER THE TERMS OF A BILL OF LADING ANNEXED TO THE PLAINTIFF'S COMPLAINT AND ISSUED BY THE DEFENDANT CONFORMABLY TO SECTION 20 OF THE ACT OF CONGRESS, APPROVED FEBRUARY 4, 1887, AS AMENDED BY THE ACT OF CONGRESS, APPROVED JANUARY 30, 1906, AND GENERALLY KNOWN AS THE CARMACK AMENDMENT TO THE HEPBURN ACT, IS DOING BUSINESS WITHIN THE STATE OF NEW YORK SO AS TO BE AMENABLE TO SERVICE OF PROCESS WITHIN SAID STATE.
2. THE COURT ERRED IN HOLDING THAT THE DEFENDANT BY REASON OF ITS ACCEPTANCE IN THE USUAL AND CUSTOMARY COURSE OF INTERSTATE COMMERCE OF A FREIGHT SHIPMENT, FOR TRANSPORTATION AS AND IN THE MANNER HEREINBEFORE RECITED, RENDERED ITSELF AMENABLE TO SERVICE OF PROCESS WITHIN THE STATE OF NEW YORK, MADE BY LEAVING THE SAME WITH A MEMBER OF THE BOARD OF DIRECTORS OF THE DEFENDANT RESIDING

WITHIN THE STATE OF NEW YORK BUT NOT REPRESENTING THE DEFENDANT WITHIN THE STATE OF NEW YORK IN RESPECT OF ANY BUSINESS CONDUCTED IN SAID STATE.

3. THE COURT ERRED IN DENYING THE MOTION OF THE DEFENDANT TO QUASH THE SERVICE OF SUMMONS ATTEMPTED TO BE MADE HEREIN AND TO DISMISS THE CAUSE FOR WANT OF JURISDICTION OVER THE PERSON OF THE DEFENDANT.

4. THE COURT ERRED IN ENTERING A JUDGMENT AGAINST THE DEFENDANT WHICH IF ENFORCED AGAINST THE DEFENDANT IN ACCORDANCE WITH ITS TERMS WOULD BY REASON OF THE ABSENCE OF PERSONAL JURISDICTION OVER THE DEFENDANT CONSTITUTE A TAKING OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.
(Record, pp. 50-52.)

(7) *Allowance of writ of error.*

On June 29, 1912, an order was entered by the District Court allowing the writ of error, and certifying to this Court the question of jurisdiction hereinbefore stated (Record, p. 51).

ARGUMENT.

I.

The requirements of due process of law forbid that a corporation be held amenable to service of process in a foreign jurisdiction unless engaged in business therein of such character and in such a manner and to such an extent as to bring itself within the jurisdiction so that service of process

upon an agent directly representing the authority of the corporation would constitute reasonable notice to the corporation to appear and defend.

The sufficiency of service of process as the foundation for the exercise of personal jurisdiction over a foreign or alien corporation, tested by the familiar requirements of due process of law, has frequently been drawn into question in this Court. To review all the decisions of this Court relating to the subject would extend unduly the range of the present argument. For convenient reference the leading decisions are arranged chronologically in a subjoined footnote*. It seems sufficient to select for analysis and discussion those decisions which, while reflecting the spirit and authority of the others, bear directly upon the proposition stated in the foregoing headnote.

The earliest case in this Court dealing fully with service of process upon a foreign corporation is *The Lafayette Insurance Company vs. French and others*, 18 How., 405 (1855). The decision was rendered

* *The Lafayette Insurance Company vs. French*, 18 How., 405 (1855); *Ex Parte Schollenberger*, 96 U. S., 369 (1877); *St. Clair vs. Cox*, 106 U. S., 350 (1882); *New England Mutual Life Insurance Company vs. Woodworth*, 111 U. S., 138 (1884); *Societe Fonciere et Agricole Des Etats Unis vs. Milliken*, 135 U. S., 304 (1890); *Fitzgerald and Mallory Construction Company vs. Fitzgerald*, 137 U. S., 98 (1890); *Mexican Central Railway Company vs. Pinkney*, 149 U. S., 194 (1893); *In re Hohorst, Petitioner*, 150 U. S., 653 (1893); *Goidey vs. Morning News*, 156 U. S., 518 (1895); *Barrow Steamship Company vs. Kane*, 170 U. S., 100 (1898); *Connecticut Mutual Life Insurance Company vs. Spratley*, 172 U. S., 602 (1899); *Conley vs. Mathieson Alkali Works*, 190 U. S., 406 (1903); *Geer vs. Mathieson Alkali Works*, 190 U. S., 438 (1903); *Pennsylvania Lumbermen's Insurance Company vs. Meyer*, 197 U. S., 407 (1905); *Peterson vs. Chicago, Rock Island and Pacific Railway Company*, 205 U. S., 364 (1906); *Green vs. Chicago, Burlington and Quincy Railway Company*, 205 U. S., 580 (1906); *Mechanical Appliance Company vs. Castleman*, 215 U. S., 437 (1910); *Herndon-Carter Company vs. Norris, Son and Company*, 224 U. S., 496 (1912).

upon a writ of error to the Circuit Court of the United States for the District of Indiana to review a judgment at law against the plaintiff in error, a corporation of Indiana, entered in an action against it based upon a prior judgment recovered in the Commercial Court of Cincinnati, State of Ohio. The prior judgment had been recovered in an action upon a contract of insurance made by the corporation within the State of Ohio with a citizen of that State to insure property situated therein, process in the action having been served upon a resident agent. The plaintiff in error contended that as a corporation created by the laws of the State of Indiana it had no legal existence out of that State, could not be sued within the State of Ohio and that the Commercial Court of Ohio had not acquired such jurisdiction over it as was necessary to support a judgment *in personam*, entitled to full faith and credit in a sister state, under the Act of Congress approved May 26, 1790. In an opinion on behalf of this Court holding the service sufficient and the judgment of the Commercial Court of Ohio valid, Mr. Justice CURTIS said, among other things (p. 407) :

"A corporation may sue in a foreign State, by its attorney there ; and if it fails in the suit, be subject to a judgment for costs. And so if a corporation, though in Indiana, should appoint an attorney to appear, in an action brought in Ohio, and the attorney should appear, the court would have jurisdiction to render a judgment, in all respects as obligatory as if the defendant were within the State. The inquiry is not whether the defendant was personally within the State, but whether he, or some one authorized to act for him in reference to the suit, had notice and appeared ; or, if he did not appear, whether he was bound to appear or suffer a judgment by default.

"And the true question in this case is, whether this corporation had such notice of the suit, and was so far subject to the jurisdiction and laws of Ohio, that it was bound to appear, or take the consequences of non-appearance (our italics.)

"A corporation created by Indiana can transact business in Ohio only with the consent, express or implied, of the latter State (13 Pet., 519). This consent may be accompanied by such conditions as Ohio may think fit to impose; and these conditions must be deemed valid and effectual by other States, and by this court; *provided they are not repugnant to the constitution or laws of the United States, or inconsistent with those rules of public law which secure the jurisdiction and authority of each State from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity for defense*" (our italics.)

After referring to the fact that the corporation had sent into the State of Ohio an agent authorized to make contracts of insurance on its behalf and had done this at a time there was a statute in force authorizing a foreign corporation to transact business and make contracts within the State of Ohio, upon condition that the agent to make such contracts should also be made the agent of the corporation to receive service of process in actions upon such contracts, and after stating the conclusion of the Court that service of process upon an agent so constituted was reasonable notice to the corporation, Mr. Justice CURTIS continued as follows (p. 408):

"We limit our decision to the case of a corporation acting in a State foreign to its creation, under a law of that State which recognized its existence, for the purposes of making contracts there and being sued on them, through notice to its contracting agents. The case of natural persons, and of other foreign corporations, is attended with other considerations, which might or might not distinguish it; upon this we give no opinion."

Recognizing that the early proposition that a corporation could dwell only in the place of its creation, and the corollary, that it could not be personally served with judicial process except in the place of its

creation had yielded practical significance under principles of interstate comity, and that as an indispensable instrument of trade and commerce a corporation was permitted to transact business in foreign states and enjoy a substantial beneficial existence within such foreign states, this Court found that the reason which had theretofore given it immunity to service of process outside of its domicile no longer existed, and that if in any case it should appear that a corporation had elected to extend its operations to a subordinate domicile the principles of due process of law would not be violated by requiring it to take notice of a suit instituted therein of which its representative agent had been duly advised.

It should be observed, however, that here, in reaching the conclusion that the Lafayette Insurance Company had elected to bring itself within the State of Ohio, this Court was not governed either by the fact that the corporation had actually transacted business within the State of Ohio or by the fact that one of its representative agents had been found within the State of Ohio, but pursued an independent judicial enquiry to determine whether its corporate operations were conducted within the State of Ohio under such conditions that consistently with the principle of natural justice which forbids condemnation without opportunity for defense, it could be required to take notice of a suit brought against it within the State of Ohio. It must be assumed, therefore, that if it had not appeared that the business of the corporation within the State of Ohio was conducted in such a manner and to such an extent that an established subordinate domicile could be presumed, an essential requirement of due process of law would have been absent.

This view is strongly supported by the leading case of *St. Clair vs. Cox*, 106 U. S., 350 (1882). This case was determined by this Court upon a writ of error to the Circuit Court of the United States for the Eastern Dis-

trict of Michigan to review a judgment entered upon a trial in the progress of which the plaintiff in error had offered in evidence a judgment entered in the Circuit Court of Marquette County in the State of Michigan against the Winthrop Mining Company, a corporation of the State of Illinois. Although on its face material to the pending issue the judgment was excluded on the ground that the Circuit Court of Marquette County had not acquired jurisdiction over the Winthrop Mining Company, there having been on its behalf no appearance in the action and the judgment having been taken by default upon a sheriff's return showing only that he had served process on the defendant corporation "by delivering the same to Henry J. Colwell, Esq., agent of the said Winthrop Mining Company, personally, in said county". It not appearing that at the time of the alleged service of process the Winthrop Mining Company was engaged in business in Marquette County, or elsewhere in the State of Michigan, this Court held that upon the face of the record the jurisdiction of the Circuit Court of Marquette County was defective and that its judgment was therefore properly excluded from evidence.

Mr. Justice FIELD, in concluding an elaborate opinion on behalf of this Court, said (p. 359) :

"Without considering whether authorizing service of a copy of a writ of attachment as a summons on some of the persons named in the statute—a member, for instance, of the foreign corporation, that is, a mere stockholder—is not a departure from the principle of natural justice mentioned in *Lafayette Insurance Co. v. French*, which forbids condemnation without citation, it is sufficient to observe that we are of opinion that when service is made within the State upon an agent of a foreign corporation, it is essential, in order to support the jurisdiction of the court to render a personal judgment, that it should appear somewhere in the record—either in the application for the writ, or

accompanying its service, or in the pleadings or the finding of the court—that the corporation was engaged in business in the State. The transaction of business by the corporation in the State, general or special, appearing, a certificate of service by the proper officer on a person who is its agent there would, in our opinion, be sufficient *prima facie* evidence that the agent represented the company in the business. *It would then be open, when the record is offered as evidence in another State, to show that the agent stood in no representative character to the company, that his duties were limited to those of a subordinate employee, or to a particular transaction, or that his agency had ceased when the matter in suit arose.*" (Our italics.)

It will be observed that here this Court expressly holds that the mere fact that a corporation actually is transacting business within a foreign state is only *prima facie* evidence that the agent served represents the corporation in its business, and, if not expressly, at least impliedly holds that on the final issue, it must appear from the nature and character of the business transacted and from the terms and scope of the authority of the agent that service of process upon the agent would constitute reasonable notice to the corporation and hence not involve a departure from the principle of natural justice which forbids condemnation without opportunity for defense.

This same idea is dominant in the case of *Mexican Central Railway Company vs. Pinkney*, 149 U. S. 194 (1892). An attempt was made in this case to sue the Mexican Central Railway Company, a corporation of the Commonwealth of Massachusetts, in the Circuit Court of the United States for the Western District of Texas by service of process returned as follows: "Executed on the 23rd day of September, 1891, by delivering to H. Lawton, local agent of the Mexican Central Railway Company, at El Paso, Texas, in person, a true copy of this writ."

Attempt to so serve the corporation was made in

pursuance of a statute of the State of Texas providing as follows (p. 201):

"In any suit against a foreign, private, or public corporation, joint stock company or association, or acting corporation or association, citation or other process may be served on the president, vice-president, secretary, or treasurer, or general manager, or upon any *local* agent within this State, of such corporation, joint stock company, or association, or acting corporation or association" (1 Sayles' Rev. Civ. Stat. Texas 417, Art. 1223a).

The Mexican Central Railway Company entered a special appearance in the action, for the purpose of excepting to the service of citation, and filed a plea in abatement showing, among others, the facts hereinafter stated.

For the convenience of shippers employing the lines of The Mexican Central Railway Company and certain other carriers there was established at El Paso, within the State of Texas, a warehouse where goods, wares and merchandise destined to points in the Republic of Mexico, upon their arrival at El Paso, were transferred, deposited and held by the agent of the warehouse for examination, weighing and classification, prior to their entry into the Republic of Mexico, and where the import duties on goods coming from the Republic over the railroads interested in the warehouse could be conveniently paid and such goods transferred and turned over to the proper railroads by the agent in charge of the warehouse. This warehouse, of which Lawton was the managing agent, was constructed in 1887 by The Atchison, Topeka and Santa Fe Railroad Company on property owned by it but which subsequently passed by transfer to The Rio Grande and the El Paso Railroad Company, which owned the property at the time service was attempted to be made upon Lawton. The Mexican Central Railway Company paid one-half of all the expenses incurred in the maintenance and operation of the warehouse, while The Rio Grande and El Paso

Railroad Company, The Texas and Pacific Railroad Company, The Galveston, Harrisburgh and San Antonio Railroad Company and the Southern Pacific Railroad Company shared the balance thereof on a tonnage basis. Lawton and all of the joint agents employed at the warehouse were selected by the Rio Grande and El Paso Railroad Company with the approval of the other four companies interested in the warehouse (including The Mexican Central). The names of these employes appeared only upon the payrolls of the Rio Grande and El Paso Railroad Company. Lawton and the force employed by him were under bond to the Rio Grande and El Paso Railroad Company, The Texas and Pacific Railroad Company, Galveston, Harrisburg and San Antonio Railroad Company and The Southern Pacific Railroad Company, conditioned for the faithful performance of the duties required of them by said last-mentioned companies, to which reports were made and of and for which money was collected and received by Lawton. In his relation to The Mexican Central Railroad Company Lawton was not authorized to make contracts on its behalf, collected and handled no money for it or on its account, was not under bond to it, kept no accounts of or for it, was not on its payroll, was not selected or appointed by it, and The Mexican Central Railway Company was without power to discharge him.

In holding that Lawton could not be regarded as a local agent of The Mexican Central Railway Company within the meaning of the statute, this Court, speaking by Mr. Justice JACKSON, said (p. 202) :

“ While it may be somewhat difficult to define the line between those who represent a foreign corporation and those who do not, within the meaning of the Texas statute quoted, it is perfectly clear to our minds that the relation between Lawton and the defendant was not such as to render him a ‘local agent’ upon whom process against the company could be served; for in no proper sense was he the direct representative of

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the company, any more than a general ticket agent employed by one of the great trunk lines running out of New York to the West, who sells a through ticket to the city of Mexico, which would entitle the holder of it to transportation to the city of Mexico over the road of the plaintiff in error, would be its agent, although it might bear some proportion of the expense of the general office in New York."

Although this decision was based upon the construction of a statute of the State of Texas, it is evident that this Court was guided fundamentally by the requirements of due process of law upon which the validity of the statute necessarily depended. Recognizing that The Mexican Central Railway Company was technically transacting business at El Paso through the agency of Lawton, nevertheless this Court, having regard for the character of the business transacted and the nature of the agency, was manifestly controlled by the practical consideration that service of process upon Lawton would not necessarily afford reasonable notice to the corporation to appear and defend.

Thus, upon a different state of facts a different conclusion was reached in the case of *Connecticut Mutual Life Insurance Company vs. Spratley*, 172 U. S., 602 (1899). The Connecticut Mutual Life Insurance Company, a corporation of Connecticut, had been actively engaged in the business of life insurance in the State of Tennessee from February 1, 1870, to July 1, 1894, and, as required by the statutes of the State of Tennessee, had filed with the Insurance Commissioner a power of attorney authorizing the Secretary of State to acknowledge service of process for it and on its behalf at any and all times after it had been regularly admitted, even though it might subsequently have retired or have been excluded from the State. On July 1, 1894, the corporation withdrew from active business within the State but continued to receive,

through its agent at Louisville, in the State of Kentucky, payments of premiums upon insurance outstanding on the lives of residents of the State of Tennessee. In February, 1893, prior to the retirement of the corporation from active business within the State of Tennessee, it issued a policy of insurance upon the life of Benjamin R. Spratley for the benefit of his wife. Mr. Spratley died on February 28, 1906, leaving a widow as the beneficiary of the policy of life insurance so issued. Liability upon this policy having been asserted, the corporation sent a Mr. Chaffee to the State of Tennessee to investigate into the circumstances of the death of Mr. Spratley and into the merits of the claim made by Mrs. Spratley, and while there he was authorized by the corporation to compromise the claim upon terms stated in a telegram sent to him by its vice-president. The offer of compromise having been refused, an action upon the contract was commenced against the corporation in one of the courts of the State of Tennessee by service of process upon Mr. Chaffee. No appearance was entered on behalf of the corporation and a judgment against it by default was obtained by the plaintiff for the full amount of her claim. The corporation thereupon filed a bill in the chancery court of Shelby County, Tennessee, for the purpose of enjoining the plaintiff from taking any proceedings under the judgment and also for a decree pronouncing the judgment void, and releasing the corporation therefrom. The court of chancery gave a decree for the complainant corporation, but on appeal to the Supreme Court of the State the decree having been reversed, the complainant brought the case to this Court. In sustaining the validity of the service made upon Mr. Chaffee this Court, speaking by Mr. Justice PECKHAM, said (p. 610) :

"In a suit where no property of a corporation is within the State, and the judgment sought is a personal one, it is a material inquiry to ascertain whether the foreign corporation is engaged in

doing business within the State; *Goldrey v. Morning News*, 156 U. S., 519; *Merchants' Manufacturing Co. v. Grand Trunk Railway Co.*, 13 Fed. Rep., 358; and if so, the service of process must be upon some agent so far representing the corporation in the State that he may properly be held in law an agent to receive such process in behalf of the corporation. An express authority to receive process is not always necessary."

Mr. Justice PECKHAM then states the nature and extent of the business which had been transacted by the corporation within the State of Tennessee while actively engaged in business therein, as well as that transacted by it subsequent to its formal withdrawal from business in the year 1894, and having expressed the judgment of the Court that the corporation was doing business within the State at the time of the action "so far as necessary, within the meaning of the law upon this subject," proceeded as follows (p. 611):

"It is admitted that the person upon whom process was served was an agent of the company. Was he sufficiently representative in his character?"

Mr. Justice PECKHAM then referred, among other things, to the nature of Mr. Chaffee's agency, noting that his whole time and services were given to the corporation under appointment made years previously, that he received a salary from it not dependent upon any particular service at any particular time, that he had entered the State of Tennessee with its authority and was acting in that capacity at the time process was served upon him, and stated the conclusions of the Court as follows (p. 612):

"In view of all the facts, we think it a proper case in which the law would imply, from his appointment and authority, the power to receive service of process in the case which he was attending to."

It will be again observed that although it was established that the corporation was in fact engaged in business within the State, and that the service had been made within the State upon an agent, sent there by the corporation, yet these facts alone were not deemed sufficient by this Court to establish the validity of the service. On the contrary, this Court found it necessary to pursue another elaborate inquiry to determine whether, in view of the nature of the business transacted and the scope and purpose of the agent's authority, the corporation could be judicially presumed to be present within the jurisdiction so that the service of process upon the agent would constitute notice to the corporation.

The learned Circuit Judge cited in support of the decision now presented for review the case of *Pennsylvania Lumbermen's Mutual Fire Insurance Company vs. Meyer*, 197 U. S., 407 (1905). This case is in no essential feature dissimilar to the one just discussed. The plaintiff in error was a corporation organized under the laws of the Commonwealth of Pennsylvania and engaged in the business of insuring property located in the State of Pennsylvania and elsewhere in the United States. It maintained no direct agency in the State of New York but, as the result of circulars sent by mail and other methods of solicitation, had, at the time of the institution of the action, issued policies of insurance upon property situated within the State of New York to the extent of \$900,000, constituting slightly less than one-third of its entire outstanding business. Each policy provided that in the event of a claim thereunder an adjuster should be sent by the corporation into the State of New York to adjust the amount of the loss. Loss having occurred in respect of property within the State of New York covered by one of the policies so issued by the corporation, and an adjustment between the policyholder and the agent sent into the State of New York under the terms of the contract having failed,

an action upon the contract was commenced against the corporation in the Supreme Court of the State of New York by delivery of a copy of a summons to two resident directors. The corporation attacked the validity of the service on the grounds: first, that it was not engaged in the business within the State of New York, and, second, that service upon a resident director was not service upon a representative agent. In dealing with the first question this Court, in an opinion written by Mr. Justice PECKHAM, after advert- ing to the practice under which the corporation had issued policies, to the extent of nearly one-third of its entire outstanding business, upon property situated within the State of New York, each of which policies contemplated and provided for the presence of a direct representative of the corporation within the State of New York in event of a claim thereunder, said (p. 415):

" This is not a sporadic case, nor the contracts in suit the only ones of their kind issued upon property within the State of New York. Many contracts of the nature of the one in suit were entered into by the company covering property within the State. We think it would be somewhat difficult for the defendant to describe what it was doing in New York, if it was not doing business therein, when sending its agents into that State to perform the various acts of adjustment provided for by its contracts and made necessary to carry them out."

Referring to the service upon the resident director, Mr. Justice PECKHAM said (p. 417):

" We think the service of summons within the State of New York upon a director residing in that State was, under the facts of this case, a good service. As is seen, the company was doing business within the State and the cause of action arose therein, and in such a case service upon a director residing in the State was sufficient. There is nothing in the cases of *Conley v. Mathieson Alkali Works*, 190 U. S., 406, and *Geer v.*

Mathieson Alkali Works, 190 U. S., 428, to the contrary. The first of the above cited cases seems rather to assume that if the company were doing business in the State, the service on a resident director would have been good."

Mr. Justice PECKHAM then observed that the large volume of business obtained by the corporation upon property within the State of New York might have some substantial relation to the confidence which the presence of two resident directors in the governing body of the corporation and their active participation in its affairs would give to possible insurers residing in the State of New York, and said (p. 418):

"Service upon them it may be assumed would certainly result in notice to the company itself, which is at least one of the reasons for holding a service on an agent good."

Although this decision was cited by the learned Circuit Judge in his opinion sustaining the service in the case at bar, it is apparent that the decision is not inconsistent with the proposition which is advanced in the above head-note as the foundation for the argument that the service was invalid, but on the contrary, that it tends strongly to support the proposition. Mr. Justice PECKHAM did not regard as conclusive the mere fact that the corporation was engaged in some business within the State of New York, but commented at length upon the nature and extent of the business, observing particularly that the contract underlying the action was not a sporadic one and that many contracts of like character had been entered into by the corporation; and, moreover, in dealing with the representative character of the director, he was careful to limit the decision to the peculiar facts from which it was presumed that service of process upon the director would result in direct notice to the corporation.

The latest expression by this Court relating directly to the proposition under discussion, and perhaps the

most conclusive expression, is found in the case *Green vs. Chicago, Burlington and Quincy Railroad Company*, 205 U. S., 530 (1907). Here an attempt was made to commence an action in tort against the Chicago, Burlington and Quincy Railroad Company, a corporation of the State of Iowa, in the United States Circuit Court for the Eastern District of Pennsylvania, by service of process upon Harry E. Heller, stated to be an agent of the corporation. The defendant appeared specially for the purpose of disputing jurisdiction. The Circuit Court held the service insufficient, and its decision was brought to this Court by writ of error, for review.

Mr. Justice MOODY, epitomizing the judicial question arising out of the attempted service, said (p. 532):

"Its validity depends upon whether the corporation was doing business in that district *in such a manner and to such an extent as to warrant the inference that through its agents it was present there*" (our italics.)

It appears from the facts summarized in the opinion of Mr. Justice MOODY that the eastern point of the defendant's line of railroad was at Chicago, whence its tracks extended westward; that the business for which it was incorporated was the carriage of freight and passengers, and the construction, maintenance and operation of a railroad for that purpose; that as incidental and collateral to that business it was proper, and according to the business methods generally pursued, and probably essential, that freight and passenger traffic should be solicited in other parts of the country than those through which the defendant's tracks ran; that for the purpose of conducting this incidental business the defendant employed Mr. Heller, hired an office for him in Philadelphia, designated him as district freight and passenger agent, and in many ways advertised to the public these facts; that the business of this agent was to solicit and secure passengers and freight to be transported over the

defendant's lines; that for conducting this business several clerks and various passenger and freight agents were employed, who reported to the agent and acted under his direction; that the agents sold no tickets and received no payments for transportation of freight; that when a prospective passenger desired a ticket and applied to the agent for one, the agent took the applicant's money and procured from one of the railroads running west from Philadelphia a ticket for Chicago and a pre-paid order, which gave to the applicant, upon his arrival at Chicago, the right to receive from the Chicago, Burlington and Quincy Railroad a ticket over that road; that occasionally the agent sold to railroad employees, who already had tickets over intermediate lines, orders for reduced rates over the defendant's lines; and that in some cases, for the convenience of shippers who had received bills of lading from the initial line for goods routed over the defendant's lines, he gave in exchange therefor bills of lading over the defendant's line; and in these bills of lading it was recited that they should not be in force until the freight had been actually received by the defendant.

In an opinion holding that the service upon Mr. Heller was not binding upon the Chicago, Burlington and Quincy Railroad Company, Mr. Justice Moody, speaking for this Court, after reciting the facts substantially as stated above, said (p. 533):

"The question here is whether service upon the agent was sufficient, and one element of its sufficiency is whether the facts show that the defendant corporation was doing business within the district. It is obvious that the defendant was doing there a considerable business of a certain kind, although there was no carriage of freight or passengers. In support of his contention that the defendant was doing business within the district in such a sense that it was liable to service there, the plaintiff cites *Denver, &c., Railroad Co. v. Roller*, 100 Fed. Rep., 738, and *Tuchband v. Chicago &c. Railroad*, 115 N. Y., 437. The facts in those cases were similar to those in the

present case. But in both cases the action was brought in the state courts, and the question was of the interpretation of a state statute and the jurisdiction of the state courts.

"The business shown in this case was in substance nothing more than that of solicitation. Without undertaking to formulate any general rule defining what transactions will constitute 'doing business' in the sense that liability to service is incurred, we think that this is not enough to bring the defendant within the district so that process can be served upon it. This view accords with several decisions in the lower Federal courts. *Maxwell v. Atchison &c. Railroad*, 34 Fed. Rep., 286; *Fairbank & Co. v. Cincinnati &c. Railroad*, 54 Fed. Rep., 420; *Union Associated Press v. Times Star Co.*, 84 Fed. Rep., 419; *Earle v. Chesapeake &c. Railroad*, 127 Fed. Rep., 235."

It is to be noted that this Court again asserts, more explicitly, however, than in any of its earlier opinions, that the validity of the service is not established even though it appear that the corporation is transacting business within the jurisdiction, unless it further appear that it is transacting business of such character and in such a manner and to such an extent as to warrant the inference that through its authorized agents and representatives it has acquired within the jurisdiction a subordinate domicile.

Declining, moreover, to commit itself to any general rule attempting to define the state of facts which would justify such an inference, this Court leaves itself free to decide each case as it arises, guided only by the broad principles which underlie the doctrine of due process of law.

The plaintiff in error rests entirely upon these broad principles.

Admitting that through the instrumentality of a corporate agent it has transacted business within the State of New York, it asks the judgment and decision of this Court whether the nature and extent of the business and the character of the agency through

which it has been transacted are such as to justify the inference that through its agent it is so present within the State of New York, that service of process upon its agent within the State of New York would constitute reasonable notice to the plaintiff in error to appear and be heard and afford it a reasonable opportunity to interpose a defense.

II.

Although engaged in business within the State of New York, and elsewhere throughout the United States, in the usual and customary course of interstate commerce conducted in obedience to the provisions of the Act of Congress regulating trade and commerce among the several States, the plaintiff in error is not engaged in business within the State of New York so as to be amenable to service of process therein.

The service of process in the case at bar was attempted to be made by delivering a copy of the summons and complaint to Mr. Lawrence Greer, one of two directors of the plaintiff in error residing within the State of New York.

Inasmuch as it appears from the record and is stated in the certificate of the Court below that the director upon whom service was thus attempted to be made did not in point of fact represent the plaintiff in error in any business within the State of New York the validity of the service must depend upon a collateral enquiry whether he should be held to represent the plaintiff in error in point of law because the corpora-

tion by reason of business transacted through some representative agent has brought itself within the State of New York (*Conley vs. Mathieson Alkali Works*, 190 U. S., 423; *Pennsylvania Lumbermen's Mutual Fire Insurance Company vs. Meyer*, 197 U. S., 497, *ante*, p. 21).

It further appears from the record and from the certificate of the Court below that the plaintiff in error is not engaged in business within the State of New York excepting in so far as the transaction of business therein is established—

"by reason of its acceptance of a freight shipment for transportation from Waco, Texas, beyond its lines of railroad to New York City under the terms of a bill of lading annexed to the plaintiff's complaint and issued by the defendant conformably to Section 20 of the Act of Congress approved February 4, 1887, as amended by the Act of Congress approved January 29, 1906, and generally known as the Carmack Amendment to the Hepburn Act."

In order to determine the precise character of the business thus transacted recourse must be had to the congressional legislation prescribing the terms of the bill of lading.

Section 20 of the Act of Congress approved February 4, 1887, as amended by the Act approved January 29, 1906, and referred to in the certificate of the Court below, provides as follows :

"That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation com-

pany from the liability hereby imposed. *Provided*: That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

"That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof."

In *Atlantic Coast Line Railroad Company vs. Riverside Mills*, 219 U. S., 186 (1911)—a case involving the constitutionality of this statute and resulting in the most exhaustive consideration by this Court of its purpose, scope and effect—Mr. Justice LUTON, speaking for this Court, said (p. 196):

"The indisputable effect of the Carmack amendment is to hold the initial carrier engaged in interstate commerce and 'receiving property for transportation from a point in one State to a point in another State' as having contracted for through carriage to the point of destination, *using the lines of connecting carriers as its agents*" (our italics).

Resting entirely on the legal effect of the Carmack Amendment as thus interpreted by this Court, the argument advanced to uphold the service in the case at bar is that inasmuch as the plaintiff in error issued its bill of lading, undertaking, as principal, to deliver the shipment in question at a point within the State of New York, using the rail carrier to destination as its agent, it was necessarily transacting business within the State of New York. Thus the learned Circuit Judge in his opinion said:

"Whether it were doing business cannot but be regarded as a very doubtful question. Still upon the authority of *Atlantic Coast*

Line R. Co. vs. Riverside Mills, 219 U. S., 186, and *Pennsylvania Lumbermen's Ins. Co. vs. Meyer*, 197 U.S., 407, I have concluded to hold that under the 1906 amendment to the Interstate Commerce Act (34 Stat. at Large, ch. 3591, Sec. 20) a railroad company receiving property for transportation from a point in one state to a point in another state beyond its own lines is doing business within the latter state to such extent as to confer jurisdiction upon the Federal Courts over a removed action for damages to such property commenced by the service of process in accordance with the laws of such State" (Record, p. 42).

It must be borne in mind, in order to appreciate the scope and effect of this decision, that service of process was made upon a director not representing the plaintiff in error in any business within the State of New York; that its validity is wholly dependent upon the establishment as a collateral fact that the plaintiff in error was transacting business within the State of New York through some other agent, upon whom lawful service might have been effected; and that the only business transacted by the plaintiff in error within the State of New York was that spelled out of its agreement under the bill of lading annexed to the complaint, to deliver the shipment at a point within the State of New York through the agency of the rail carrier at destination.

The question is thus narrowed to an enquiry whether the nature and extent of the business thus transacted by the plaintiff in error through the agency of the rail carrier at destination appears to be such that service of process upon the carrier at destination as the agent of the plaintiff in error would be valid and effectual.

If this proposition is affirmed it follows by inevitable logic that all rail carriers which are engaged in interstate commerce and are required by Section 1 of the Act to Regulate Commerce, as amended by the Act approved June 18, 1910, to "establish through routes and just and reasonable rates applicable thereto, and to provide reasonable facilities for operating such

through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto," are in like manner engaged in business in every state in the United States and amenable to service therein, made upon any carrier participating in the through rate.

Although this result is on its face so far reaching and extraordinary that the question at once arises whether the underlying proposition is not manifestly inconsistent with the fundamental requirements of natural justice, brief reference may first be made to the real purpose and legitimate scope of the Carmack Amendment to the Hepburn Act.

Mr. Justice LUTON, in the opinion already referred to, deals at great length with the conditions in respect of which Congress had undertaken to legislate, and quotes the following interesting passage from the speech of Judge William Richardson, a Congressman from Alabama, made when the measure was reported by a conference committee (p. 200) :

" ' One of the great complaints of the railroads has been—and, I think, a reasonable, just and fair complaint—that when a man made a shipment, say, from Washington, for instance, to San Francisco, Cal., and his shipment was lost in some way, the citizen had to go thousands of miles, probably, to institute his suit. The result was that he had to settle his damages at what he could get. What have we done? We have made the initial carrier, the carrier that takes and receives the shipment, responsible for the loss of the article in the way of damages. We save the shipper from going to California or some distant place to institute his suit. Why? The reasons for inducing us to do that were that the initial carrier has a through route connection with the secondary carrier, on whose route the loss occurred, and a settlement between them will be an easy matter, while the shipper would be at heavy expense in the institution of a suit. If a judg-

ment is obtained against the initial carrier, no doubt exists but that the secondary carrier would pay it at once. Why? Because the arrangement, the concert, the co-operation, the through route courtesies between them would be broken up if prompt payment were not made. We have done that in conference' (Cong. Rec. Pt. 10, p. 9580)."

It thus appears that the real purpose of Congress was to localize a resort to judicial remedies by creating a cause of action enforceable in the *locus contractus*, thus relieving the shipper of the burden of instituting his action in a distant *forum*. As a curious result or sequence of this remedial legislation, it seems that the conditions are to be reversed; instead of the shipper being required to go thousands of miles to institute the action, the carrier is to be required to go thousands of miles, to defend the action.

The proposition which leads to this plain perversion of the Act of Congress rests upon a misconception of the decisions of this Court.

The review already made of the leading decisions clearly shows that the business transacted in a foreign jurisdiction must, in its nature and extent, in order to create the subordinate domicile indispensable to due process of law, establish between the corporation and the agency by means of which the business is transacted, such a relation as would justify a presumption that service of judicial process upon the agent would be communicated to the corporation itself, and the corporation afforded an opportunity to appear and to defend the action.

That the business which an interstate rail carrier conducts beyond the state of its creation under mandate of the Carmack Amendment to the Hepburn Act creates no such domicile is a proposition so perfectly manifest that it seems idle to undertake to demonstrate it. The agency arising under the statute is technical rather than substantial. The business transacted by the agent is really not the business of the principal at all. All of the initial carrier's beneficial

interest in an interstate shipment ceases when the car containing it passes from its road. The compensation of the initial carrier is based upon the service which it performs and not upon that performed by carriers beyond. The service undertaken by each succeeding carrier, whether it act technically as principal or as agent, is essentially its own service. In no practical sense does it recognize any direct relation to the initial carrier, or recognize any of the obligations which ordinarily spring from the relation of agent to principal. Elements of privity, control, responsibility and individual selection which are the very genius and foundation of the rule which commits a principal to liability for the act or default of its agent are almost wholly absent.

Take by way of illustration the case presented by the present record.

The shipment upon which the action was based was routed, as appears from the bill of lading, as follows:

"Cotton Belt to East St. Louis Care Big 4. E. St. Louis Care Nickel Plate Route."

What corporate instrumentalities, what legal agencies, were to perform the service between the point of origin and the point of destination does not appear upon the bill of lading. This Court must, moreover, judicially know that the movement of the car containing the shipment thus routed was necessarily dependent on traffic conditions of which the initial carrier could not be advised. Whether, for example, the operating authorities at East St. Louis would send the car for a particular movement over a road owned by one corporation or over a road owned by another corporation or whether (acting within their rights if the interests of the shipper required) they would send it over a route entirely different from the route indicated approximately by the bill of lading would depend upon conditions as found to exist when the car reached East St. Louis; yet, under the doctrine of the case at

bar, each corporation owning a section of track over which the car may move or a siding on which it may rest and participating in the through rate is constituted the legal and qualified agent of the initial carrier, by which it transacts an extra-territorial business and which is hence authorized in the foreign jurisdiction to receive process on its behalf.

No argument is necessary to convince this Court that service of process upon one of these unknown, accidental, sporadic agents would not constitute reasonable notice to the initial carrier to appear in a remote jurisdiction and defend an action.

Assume that there had been no director of the plaintiff in error resident in the State of New York, and that the defendant in error had been compelled to effect service upon the carrier at destination. What would have been the probable result?

It is asserted throughout the record that the carrier at destination was the West Shore Railroad Company, although it may be within the judicial knowledge of this Court that nearly thirty years ago the West Shore Railroad Company surrendered its operating autonomy under a lease of its property for a term of four hundred and seventy-five years to the New York Central and Hudson River Railroad Company (Poor's Manual, 1912, p. 2,589).

If, however, before attempting service, the defendant in error had ascertained this fact and had served the summons and complaint upon some officer or agent of the New York Central and Hudson River Railroad Company, what, then, might have been reasonably expected? The officer or agent receiving the summons and complaint, recognizing no relation whatever, either individually, or officially through his connection with the New York Central and Hudson River Railroad Company, to the plaintiff in error, probably would have disregarded the summons and complaint entirely.

Assume, however, that the officer or agent had been fully informed that the service was made upon him as an officer or agent of the New York Central and

Hudson River Railroad Company, which in turn was the agent of the plaintiff in error, representing it in respect of its business transacted within the State of New York under a certain Act of Congress, and that notice of the pendency of the suit should be communicated immediately to the plaintiff in error, which by the terms of the summons was required to appear and answer the complaint within twenty days or suffer default. What might be expected in this event? No doubt the officer or agent would refer the document to the proper department of the New York Central and Hudson River Railroad Company, which in turn would make an effort, perhaps a successful effort, to bring the pendency of the action to the notice of plaintiff in error before the date of default.

In either of these supposed cases, however, there is grave practical danger that, far from being given a reasonable opportunity to appear and defend, the first notice which the plaintiff in error would receive of the institution of the action would be when called upon to defend an action subsequently instituted against it in the State of Texas and based upon a final judgment of the court of the State of New York, conclusive by reason of the presence of all jurisdictional requisites and irrevocable by reason of the passing of the term, and entitled to full faith and credit under the Revised Statutes of the United States.

These are not extreme illustrations.

On the contrary they suggest the normal and probable outcome of an attempt to establish the principle that a corporation which for all practical purposes has continued to dwell in the place of its creation is to be held legally responsible for the defaults and omissions of agents scattered over the United States, which it does not know; which do not know it, over which it has no control or direction, and which owe to it no responsibility whatever. To hold the corporation bound by the authority of such agents would violate the spirit and letter of every opinion quoted in support of the previous head-

note. It would violate Mr. Justice CURTIS' requirement of "opportunity for defense," Mr. Justice FIELD's requirement of an agency not limited "to a particular transaction," Mr. Justice JACKSON's requirement of an agent which should be "the direct representative of the company," Mr. Justice GRAY's requirement of "an agent appointed to act there for the corporation," Mr. Justice PECKHAM's requirements of "some agent so far representing the corporation in the state that he may properly be held in law an agent to receive such process in behalf of the corporation," and of an agency not based upon "a sporadic case," and, finally, Mr. Justice MOODY's requirement of an agency such as will "bring the defendant within the district."

Arguments demonstrating the inherent vice of the proposition under discussion could be multiplied indefinitely. It seems sufficient, however, to refer briefly to the relation which the proposition would, if upheld, bear to the transportation of freight in foreign commerce. As observed in the opinion of Mr. Justice LURTON, it has long been the practice of carriers to issue a bill of lading under which they have assumed liability for the entire service. The extent to which this practice has obtained both in interstate and foreign commerce is fairly demonstrated by the number of cases in which such bills of lading have been involved in litigation. These cases are collected and reviewed in an exhaustive note subjoined to a special report of the case of *Atlantic Coast Line Railway Company vs. Riverside Mills* (31 L. R. A. [N. S.], 7). How far a cessation of this practice would disturb existing commercial relations is of course speculative and may not be material. It is enough to say that the practice exists and for a long time has existed, and that the carriers which have adopted it in respect of foreign commerce are engaged in the transportation business in foreign countries through the agency of foreign carriers. Should the decision of the Circuit Judge be upheld,

these carriers would be subject to the jurisdiction of foreign tribunals to be exercised in pursuance of process delivered to the foreign carriers as their technical agents. If the judgment of a foreign tribunal entered in the exercise of a jurisdiction so obtained should be offered under a treaty as the foundation of an action instituted in one of our courts, it would seem that the judgment should be accepted as conclusive. It at least would be somewhat difficult to justify a refusal to give full recognition to a judgment conforming to the requirements of due process of law as established by the decisions of our own courts.

It is no answer to say that if the decision of the Circuit Judge is upheld the carriers engaged in interstate and foreign commerce will adjust themselves to the new conditions and adopt measures calculated to give the indispensable representative character to the new agency. Whether such an adjustment could ever be accomplished is doubtful, but even were it practicable it seems evident that to require a corporation to commit the issue of its personal liability to litigation conducted by an agent situated thousands of miles distant from the domicile of the corporation and from the place where liability, if any, was incurred; to require it to submit to the hazard and uncertainty, incident to transmitting across continents or across oceans, documents material to its defense; to require it to employ and maintain attorneys and advocates at distant points and in foreign lands and to assume innumerable other burdens arising from these new conditions, would, apart from any question as to the practical sufficiency of its notice of the hearing and the adequacy of its opportunity to interpose defense, constitute a denial of substantial justice and a taking of its property without due process of law.

Finally it should be emphasized that the plaintiff in error has accepted no conditions from the State of New York, that it is not within the State of New York either by will or by sufferance, and that it owes to the State of New York no duty or obligation arising under

the usages of interstate comity. The plaintiff in error transacts no business within the State of New York save in obedience to the provisions of the Acts of Congress regulating interstate trade and commerce and in the performance of its federal duty as a public carrier. No Act of Congress either expressly or by implication undertakes to burden such interstate commerce by subjecting the carrier engaged therein to the jurisdiction of a court foreign to its domicile, and until Congress itself speaks its silence must be deemed equivalent to a declaration that in this aspect interstate commerce shall remain free and untrammelled (*Hall vs. DeCuir*, 95 U. S., 485; *Pullman Company vs. Adams*, 189 U. S., 420; *Allen vs. Pullman Company*, 191 U. S., 171, 181.)

III.

The judgment of the District Court should be reversed and the cause remanded with directions to vacate and quash the service of summons and to enter final judgment dismissing the action for want of personal jurisdiction over the plaintiff in error.

Dated New York, November 11, 1912.

Respectfully submitted,

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New York,

New York.

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FILED
DEC 2 1912
JAMES H. McKENNEY,

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 788.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

Plaintiff in Error,

against

ROBERT ALEXANDER.

BRIEF OF COUNSEL FOR DEFENDANT IN ERROR.

PHILAN BEALE,

Counsel for Defendant in Error,

2 WALL STREET,

New York.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912. No. 738.

ST. LOUIS SOUTHWESTERN RAIL-
WAY COMPANY OF TEXAS,

Plaintiff in Error,

against

ROBERT ALEXANDER,

Defendant in Error.

BRIEF OF COUNSEL FOR THE DEFENDANT IN ERROR.

Legal History of this Action.

(a) Purpose of the writ of error.

This cause comes before this Court on a writ of error to review a judgment at law in favor of Robert Alexander, plaintiff below, against the St. Louis Southwestern Railway Company of Texas, defendant below, which was duly entered in the office of the Clerk of the District Court of the United States for the Southern District of New York on the 27th day of June, 1912 (Rec., pp. 1, 47).

(b) Basis of action.

This action is brought under and by virtue of the Carmack Amendment to the Hepburn Act

found in 34 Statutes at Large 584, Chapter 3591, Section 20 of an act to regulate Congress, which states:

"That any common carrier, railroad or transportation company receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor and shall be liable to the holder thereof for any loss, damage or injury to such property caused by it or by any common carrier, railroad or transportation company, to which such property may be delivered or over whose line or lines such property may pass and no contract, receipt, rule or regulation shall exempt such common carrier, railroad or transportation company from the liability thereby imposed."

(c) *Service of summons and complaint.*

On the 10th day of July, 1911, this action was begun in the Supreme Court of the State of New York, by the service of a summons and complaint on the plaintiff in error in accordance with the provisions of Section 432 of the Code of Civil Procedure of the State of New York which is more specifically set forth as follows:

"Section 432. (Am'd. 1877, 1903, 1909)
How personal service is made upon a foreign corporation.

Personal service of the summons upon a defendant, being a foreign corporation, must be made by delivering a copy thereof, within the state, as follows:

1. (Am'd. 1903.) To the president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary; or if the corporation lacks either of those officers, to the officer performing corresponding functions, under another name.

2. (Am'd. 1909.) To a person designated for the purpose as provided in section sixteen of the general corporation law.

3. If such a designation is not in force, or if neither the person designated, nor an officer specified in subdivision first of this section, can be found with due diligence, and the corporation has property within the state, or the cause of action arose therein; to the cashier, a director, or a managing agent of the corporation, within the state."

As appears by the affidavit of service of Pierre J. Grilliere (Rec., p. 37), an attempt was made to deliver a copy of the within summons and complaint upon one of the officers noted in subdivision one of Section 432, but no one of them was located within the jurisdiction of the State of New York. Assurance was also had from the Secretary of State of the State of New York that no person had been designated to receive service of process on behalf of the plaintiff in error within the State of New York in accordance with said subdivision 2 of Section 432 above. Service was finally made in accordance with subdivision 3 of Section 432 by delivering a copy of the same to Mr. Lawrence Greer at No. 120 Broadway, in the City and State of New York, who was at that time a director of the said plaintiff in error, resident within the State of New York.

(d) Removal from State Court to Federal Court.

Thereafter by petition of the plaintiff in error (Rec., p. 7), the action was removed to the Circuit Court of the United States for the Southern District of New York (now the District Court of the United States for the Southern District of New York.)

(e) Motion to set aside service of process.

A motion was therein made by the plaintiff in er-

ror to have the service of process vacated and set aside on the grounds that the said Circuit Court had not acquired jurisdiction over the defendant by reason of the fact, as alleged by the plaintiff in error, that it had no office or agent within the jurisdiction of the State of New York, nor did it conduct any business therein (Rec., p. 13).

This motion was brought on for argument before Circuit Judge Walter C. Noyes, and on September 23d, 1911, the said Circuit Judge denied the motion and contemporaneously therewith filed the following opinion:

"It is clear that the service of the summons in this case was made upon the defendant as a foreign corporation in accordance with the provisions of Section 432 of the New York Code of Civil Procedure providing the cause of action arose in that state.

I am satisfied that the cause of action did arise within the State of New York. While the bill of lading upon which it is based was made in Texas it called for delivery in New York and was to be carried out to that extent in the latter state. Moreover the conditions of the bill of lading provide that claims for loss or damage 'must be in writing to the carrier at the point of delivery.' Service in accordance with the New York statute would, however, be insufficient to confer jurisdiction upon this Court unless the defendant corporation was doing business within the State. Whether it were doing business cannot but be regarded as a very doubtful question. Still upon the authority of *Atlantic Coast Line R. Co. vs. Riverside Mills*, 219 U. S., 186, and *Pennsylvania Lumbermen's Ins. Co. vs. Meyer*, 197 U. S., 407, I have concluded to hold that under the 1906 amendment to the Interstate Commerce Act (34 Stat. 74 at Large, Ch. 3,591, Sec. 20) a railroad company receiving property for transportation from a point in one state to a point in another state beyond its

own lines is doing business within the latter state to such extent as to confer jurisdiction upon the Federal Courts over a removed action for damages to such property commenced by the service of process in accordance with the laws of such State.

The motion to vacate service and dismiss for want of jurisdiction is denied" (Rec., p. 42).

(f) Order denying motion.

An order was thereupon duly made and filed denying the motion to vacate and quash the service of the summons and to dismiss the cause for want of jurisdiction over the plaintiff in error and further ordering the plaintiff in error to enter a general appearance without, however, waiving its right to further contest the validity of the service of the summons and the jurisdiction of the Court over its person, and further ordering that it plead, answer or demur to the complaint, or make such motion in respect thereof as it might be advised (Rec., p. 43).

(g) Trial of issues of fact and judgment against plaintiff in error.

After an answer had been interposed by the plaintiff in error the action was brought on for trial in the District Court of the United States for the Southern District of New York (the Judiciary Act of Congress abolishing the Circuit Court having in the meantime become effective), and the issues of fact involved were thereupon submitted to a jury. On the 15th day of June, 1912, a verdict was returned against the plaintiff in error for the sum of \$2,299.32 with interest from the first day of December, 1910, and on the 27th day of June, 1912, final judgment was duly entered against the plaintiff in error in the office of the Clerk of the District Court of the United States for the South-

ern District of New York in the sum of \$2,607.72 (Rec., p. 46).

(h) Petition by plaintiff in error for writ of error.

Thereafter on the 29th day of June, 1912, the plaintiff in error presented to the District Court its petition praying for the allowance of a writ of error directed to this Court assigning as error that this Court had held that the plaintiff in error had rendered itself amenable to service of process within the State of New York in denying the motion of the plaintiff in error to quash the service of the same, and in entering the above judgment against the plaintiff in error (Rec., p. 50).

(i) Writ of error granted and question certified.

The writ of error above was duly allowed and thereafter the said District Court duly certified that the question of the jurisdiction of the said District Court over the plaintiff in error is in issue, and further certified the following question to this Court:

"The question whether the defendant by reason of its acceptance of a freight shipment for transportation from Waco, Texas, beyond its lines of railroad to New York City, under the terms of a bill of lading annexed to the plaintiff's complaint and issued by the defendant conformably to Section 20 of the Act of Congress approved February 4, 1887, as amended by the Act of Congress approved January 29, 1906, and generally known as the Carmack Amendment to the Hepburn Act, is doing business within the State of New York, so as to be amenable to service of process within said State; whether the defendant by reason of its acceptance in the usual and customary course of interstate commerce of a freight shipment for transportation as in the

manner hereinbefore recited rendered itself amenable to service of process within the State of New York, made by leaving the same with a member of the Board of Directors of the defendant residing within the State of New York but not representing the defendant within the State of New York in respect of any business conducted in said State; and whether the motion of the defendant to quash the service of summons attempted to be made herein and to dismiss the cause for want of jurisdiction over the person of the defendant should be granted" (Rec., p. 49).

Statement of facts upon which the cause of action is founded and upon which the question of jurisdiction arises.

While the defendant in error feels that there has not been an intention on the part of the plaintiff in error to misstate or misquote in its brief any of the facts in the record of this action, nevertheless the defendant in error feels obligated to point out to this Court that the true facts differ somewhat from those alleged in the brief of the plaintiff in error submitted herein. The defendant in error respectfully sets forth the following:

The plaintiff in error is a corporation organized and existing under and by virtue of the laws of the State of Texas. On the 25th day of November, 1911, the plaintiff in error received from the Texas Packing Company at Waco, Texas, for shipment to and delivery in the City of New York, certain perishable freight consigned to the order of the consignor. The plaintiff in error delivered to the Texas Packing Company a through order

bill of lading acknowledging the receipt of the property consigned and destined, as indicated above, and agreeing to carry the same to the said City of New York, to give notice of the arrival of the property and to deliver the same to the order of the said consignor. Among the conditions endorsed upon the back of the bill of lading are the following:

"Section 3. Claims for loss, damage, or delay must be made in writing to the carrier *at the point of delivery* (our italics) or at the point of origin within four months after delivery of the property. * * * Unless claims are so made the carrier shall not be liable" (Rec., p. 6).

"Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours after notice of its arrival has been duly given may be kept in car, depot or place of delivery of the carrier or warehouse subject to a reasonable charge for storage * * * or at the option of the carrier may be removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for * * * a reasonable charge for storage" (Rec., p: 6.)

By the terms of the bill of lading the property was to proceed from Waco, Texas, to New York as follows:

"Cotton Belt to East St. Louis, in care of Big 4 E. St. Louis, care of Nickel Plate Route."

It is conceded that the Cotton Belt comprises the St. Louis Southwestern Railway Company of Texas and the St. Louis Southwestern Railway Company; that the "Big 4 and Nickel Plate Route" comprises the Chicago, Cincinnati, Cleve-

land and St. Louis Railroad Company, the Lake Shore & Michigan Southern and the West Shore Railroad Company. Thereafter the consignor for a good and valuable consideration endorsed the bill of lading and delivered the same to Robert Alexander, the plaintiff below, to whom delivery of the property herein was made in a damaged condition in the City of New York on the 5th day of December, 1912, by the West Shore Railroad Company, the terminal carrier.

The attention of this Court is respectfully directed to the affidavit of Phelan Beale, the attorney of record for the defendant in error (Rec. p. 17 to p. 47), the substantial part of which affidavit has not been in any way denied or contradicted by the plaintiff in error. This affidavit sets forth to what extent the said plaintiff in error is doing business within the City of New York.

From the said affidavit it appears that the plaintiff in error is a foreign corporation organized and existing under and by virtue of the laws of the State of Texas having two resident directors in the State of New York, Mr. Lawrence Greer and Mr. William H. Taylor. It appears from the said affidavit, the St. Louis & Southwestern Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Missouri, and that the Missouri corporation and the plaintiff in error comprise what is commonly known as the Cotton Belt Route, running from St. Louis, Missouri, through the States of Illinois, Missouri, Tennessee, Arkansas & Louisiana, into Texas, with nearly one-half of its mileage in the said State of Texas. All of the stock with exception of directors' shares of the plaintiff in error is owned by and under the control of the St. Louis, Southwestern Railway Company of Missouri, and the funded debt, mortgages, bonds

and other obligations and assets of the said plaintiff in error are owned and controlled by the St. Louis Southwestern Railway Company of Missouri.

According to statutes of the State of Texas, no foreign corporation within said State is permitted to hold real property therein, and in the light of the above statutes it is a most significant fact that the division of the Cotton Belt Route should occur at a point known as Texarkana which is situated on the dividing line between Arkansas and Texas, the lines of the St. Louis Southwestern Railway Company of Texas, the plaintiff in error extending from Texarkana south exclusively in the said State of Texas, and the lines of the St. Louis Southwestern Railway Company of Missouri extending north from Texarkana.

In short it is submitted in the said affidavit that the Missouri corporation is in complete control of the Texas corporation, and that the incorporation of the Texas Branch of the Missouri corporation was made only for the purpose of conforming with the statutes of the State of Texas above referred to.

Throughout all of the correspondence and official pamphlets and documents issued by the two roads it is to be noted that the names of the two corporations are bracketed together and show like a mathematical equation that the two corporations are equivalent to the Cotton Belt Route and that they comprise one system. Nearly all those officers whose duties are of a general nature and extend over the entire system, hold positions as officers or agents for both companies as will appear on page 22 of the record, and the annual reports issued by the plaintiff in error and the St. Louis Southwestern Railway Company of Missouri are combined and show that there is but one railroad

system, of which the plaintiff in error is but a division or a part. This will appear more fully by a reference to page 32 of the record where it is shown that a certain New York Stock Exchange application No. A3599 requesting that the said Stock Exchange list an additional amount of the consolidated mortgage 4% bonds of the St. Louis Southwestern Railway Company was made by Mr. Arthur J. Trussell, as Secretary for the said Company, setting forth that the issue contemplated was part of the Company's first consolidated mortgage 4% gold bonds, the proceeds of which were to be used for expenditures in equipping and extending certain branches of the plaintiff in error.

The affidavit further sets forth the fact that in the Dun Building, 290 Broadway, in the Borough of Manhattan, City, County and State of New York, a statement is made on the glass door of room No. 805 where the same symbol "Cotton Belt Route," which is found on all the stationery and literature of both the plaintiff in error and the Missouri corporation, occupies a prominent place and underneath which appear the words, "St. Louis Southwestern Lines, P. A. Coombs, General Eastern Freight Agent and C. W. Braden, Travelling Freight Agent."

Before this action was commenced, and in accordance with the terms of the bill of lading issued against this shipment, set forth more particularly above as Section 3 thereof, that "claims for damage should be made in writing to the initial carrier at the point of delivery," much correspondence was had with Mr. Coombs of the office above described, making claim for damage to the property herein against the plaintiff in error, and endeavoring to bring about a settlement of the claim rather than proceed to litigation. The nature of the action and the basis of the contem-

plated claim were quite fully stated, setting forth that the plaintiff in error was the initial carrier and had issued the bill of lading for the consignment herein, and as such initial carrier would be held liable for the amount of the said damage. To all of these letters replies were received acknowledging the receipt of them and showing the attention and investigation which the claim was receiving, and stating that a satisfactory reply might be had at an early date. All of the replies were signed by Mr. P. H. Coombs above referred to.

Other offices of the plaintiff in error are as follows:

Central Trust Company, 54 Wall Street, in the City, County and State of New York, Registrar of Capital Stock of the St. Louis Southwestern Railway Company of Texas and of the St. Louis Southwestern Railway Company. Registrar and trustee of and agent for the payment of interest on Twenty million dollars (\$20,000,000) first mortgage four per cent gold bonds due 1989, of the St. Louis Southwestern Railway Company, secured by the property of both corporations.

Mercantile Trust Company of 120 Broadway, in the City, County and State of New York. Transfer agent and trustee of and agent for the payment of Three million and forty-three thousand and five hundred dollars (\$3,043,500), second mortgage 4% bonds due 1989, secured by second mortgage on the property of both corporations and as Transfer Agent and trustee of and agent for the payment of interest and the annual installment of Seventy-two thousand dollars (\$72,000) on Seven hundred and twenty thousand dollars (\$720,000) 5% gold equipment bonds due 1920. Secured on equipment on the entire system.

Equitable Trust Company, 15 Nassau Street, in

the City, County and State of New York. Registrar and agent for the payment of principal and interest on Twenty-two million two hundred and sixty thousand and eight hundred and fifty dollars (\$22,260,850), First consolidated mortgage 4% gold bonds due 1930.

ARGUMENT.

POINT I.

The cause of action herein arose within the State of New York and certain acts were to be performed there which bring the case within the purview of Pennsylvania Lumberman's Insurance Co. vs. Meyer, 197, U. S., 407, therefore the service herein must be sustained.

Service in the within action was made as aforesaid in accordance with Section 432, subdivision 3, of the Code of Civil Procedure of the State of New York, which in effect states that if no officer or person designated for service by the corporation can be found with due diligence then, *if the cause of action arose within the State of New York due service upon a foreign corporation may be made by delivering a copy of the process to a director of the corporation within the state.* No denial is made that the cause of action arose within the State of New York but the defendant in error desires to accentuate this point by directing the attention of the Court that this action is based upon the breach of a contract between the parties. By the terms and conditions of that contract, to wit, the bill of lading, the plaintiff in error promised

and covenanted to transport without delay and to deliver in good condition in the City of New York, certain perishable goods to the order of the consignor. The contract comprises the transportation without delay and the delivery in good condition of the said property as the principal conditions of the same. It is certainly obvious that the principal part of the said contract was not so much its transportation, and without delay, but rather that the goods be delivered and in good condition in the City of New York.

It is of small moment to the shipper or to the consignee how the goods are transported, that is, the route and means. The obvious purpose of transporting property from one place to another is to deliver it at the point of destination, and it was the terms of the above contract regarding the delivery of the property which constituted the principal performance of the same.

It is an elementary principle of law which has been affirmed in a long line of decisions, both in Federal and State Courts, that a cause of action for breach of contract arises where the contract is to be performed. The breach of the contract therefore must have occurred at the place where the principal part of the contract was to be performed, and the cause of action, as stated, arose therefore in the place where the breach occurred, viz, in the case at bar, the place of delivery—New York City. It is not necessary to discuss this point in detail, but the defendant in error submits the following extract and cases pertinent to this question.

“The contract for the entire transportation of property is to be deemed indivisible.”

Illinois Central R. R. Co. vs. Beebe, 174 Ill., 13.

Waldron *vs.* Canadian Pacific R. R. Co.,
22 Wash., 353.

Ellis *vs.* Willard, 9 N. Y., 529.

"All matters connected with performance are regulated by the law of the place where the contract by its terms is to be performed."

Union National Bank *vs.* Chapman, 169
U. S., 538.

Scudder *vs.* Union National Bank of Chicago, 91 U. S., 406, 413.

Coghlan *vs.* S. C. R. R. Co., 142 U. S., 101,
111.

"Where the parties, though both are foreign corporations, make a contract out of the state and contemplate the performance in the state the cause of action arises here and the court has jurisdiction."

Connecticut Mutual Life Assurance Co.
vs. Cleveland Columbus & Cincinnati
R. R. Co., 18 Howard Pr., 180.

"Where a contract is made at one place and is to be performed at another, the cause of action upon such contract arises at the latter place."

Burckle *vs.* Eckhardt, 3 N. Y., 132.

Hiller *vs.* B. & M. R. R. Co., 70 N. Y., 224.

Sprawn *vs.* Brandt-Dent Co., 71 A.D.,
236, Affirmed, 175 N. Y., 463.

"The cause of action accrued when the defendant failed to perform its contract and by reason of its failure the plaintiff sustained a loss. The plaintiffs were sued in this state, and here, if anywhere, the defendant was required to defend."

Childs *vs.* Harris, 104 N. Y., 480.

In the case at bar, Mr. Judge Noyes denied a

motion to quash the service in the Court below and said in part as follows:

"I am satisfied that the cause of action did arise within the State of New York. While the bill of lading upon which it is based was made in Texas, it called for delivery in New York and was to be carried out to that extent in the latter state. Moreover the conditions of the bill of lading provided that claims for loss or damage must be in writing to the carrier at the point of delivery."

The conditions in the bill of lading referred to by Judge Noyes read as follows (Rec., p. 6):

"Sec. 3. Claims for loss, damage or delay must be made in writing to the carrier at the point of delivery. * * * Unless claims are so made the carrier shall not be liable.

Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours after notice of its arrival has been duly sent may be kept in the place of delivery of the carrier or warehouse subject to a reasonable charge for storage and to carrier's responsibility as warehousemen only, or may be removed and stored in a warehouse at the cost of the owner and there held at the owner's risk without liability on the part of the carrier subject to a lien for a reasonable charge for storage."

From the above clauses it is obvious that the plaintiff in error contemplated a possible breach at the point of delivery, otherwise it would not have allowed claims for damages to have been made there.

So to recapitulate we have an indivisible contract on the part of the plaintiff in error originating at Waco, Texas, with the principal performance thereof, to wit, the delivery, contemplated by said plaintiff in error at the very inception of the agreement, to be had in New York and at such

point the plaintiff in error exacted of the defendant in error that there he *must* submit claims for any damage by reason of failure to deliver properly in accordance with the terms of said contract and there contemplating among other things the adjustment in that jurisdiction of all claims for loss or damage.

It is contended by the defendant in error that these facts alone are sufficient to sustain the service in this action and that such contention is upheld by a unanimous decision of the Supreme Court of the United States upon a state of facts on all-fours with those in the case at bar, such decision being found in *re Pennsylvania Lumbermen's Insurance Co. vs. Meyer*, 197 U. S., 467, where a policy of insurance was issued by a Pennsylvania corporation upon property in New York State which contained a clause to pay the amount of loss which might be sustained by an estimate and appraisal at the place of loss. Mr. Justice Peckham on page 414 states as follows:

"The provisions of the contract clearly contemplate the presence of an agent of the company at the place of loss after it has occurred, for the purpose of determining its loss and adjusting, if possible, the amount payable by the plaintiff in error and contemplates not only that such loss may occur, but also that the plaintiff in error would send to the place where the loss occurred, that is, to New York, its agent, for the purpose stated. * * *

The policy does not state in so many words whether the payment is to be made, but it is a general rule that in the absence of any such provision, or of any language from which a different inference may be inferred, the right of the creditor to demand payment at his own domicile exists, and it is the duty of the debtor to pay his debt to the creditor in that way. It is stated in the opinion of this Court

by Mr. Justice Field in *State Tax on Foreign Held Bonds* (Cleveland P. & A. R. Co. *vs.* Pennsylvania) 15 Wallace, 300, 320, where he says 'Debts can have no locality separated from the parties to whom they are due. This principle might be stated in many different ways and supported by citations from numerous adjudications, but no number of authorities and no forms of expression could add anything to its obvious truth which is recognized upon its simple statement.' "

The defendant in error distinguishes the cases cited in the appellant's brief wherein service was not held good, by pointing out that in such cases there was no jurisdiction of the subject matter of the suit and that the cause of action did not arise within the State nor was there in the contemplation of the parties that any adjustment or claim for damages should be asserted at the point of delivery. In other words, defendant in error avers that Mr. Justice Peckham's decision is applicable to that class of cases wherein the

"provisions of the contract clearly contemplated the presence of an agent of the company at the place of loss, after it has occurred for the purpose of determining its loss and adjusting, if possible,"

and that by reason of the provisions of the bill of lading which inexorably exact of the consignee that he *must* submit his claim for damages at New York City, there is clearly contemplated the presence of an agent of the plaintiff in error at New York City for adjustment of the loss, bringing the case at bar absolutely within the purview of Mr. Justice Peckham's decision and therefore the service must be sustained accordingly.

Yet the defendant in error does not rely upon

this point alone to sustain such service but submits that for another reason the service is perfectly valid as the plaintiff in error was actually engaged in doing business in the State of New York in this particular instance, which said reason is set forth as follows:

POINT II.

The decision in the cases of Atlantic Coast Line v. Riverside Mills, 219 U. S., 186, et al., construing the Carmack Amendment to the Hepburn Act, show conclusively that the plaintiff-in-error was actually engaged in doing business within the State of New York.

The Court has seen how the respondent sustained the validity of the service under Point I. Approaching the question from an entirely different angle he respectfully submits that this action was brought under and by virtue of the Carmack Amendment of the Hepburn Act, found in 34 Statutes at Large 584, Chapter 3591, Section 20, setting forth that any common carrier shall be liable for damage to any shipment whether caused by the initial or a connecting carrier. This enactment was judicially construed and held constitutional by this Court in the case of Atlantic Coast Line *vs.* Riverside Mills, in 219 U. S., 186. The decision was based on the law of agency to the effect that the contract of transportation and delivery was between the initial carrier and the shipper as principals, and that all subsequent carriers connecting with the original and over which the shipment was forwarded, were to be considered as the

agents of the initial carrier for the purpose of the contract.

In the above case Mr. Justice Lurton states at page 203:

"The requirement that carriers who undertook to engage in interstate transportation and as a part of that business held themselves out as receiving packages destined to places beyond their own terminal, should be required as a condition of continuing in that traffic to obligate themselves to carry to the point of destination, using the lines of connecting carriers as their own agencies, was not beyond the scope of the power of regulation. The rule is adapted to secure the rights of the shipper by securing unity of transportation with unity of responsibility. *The regulation is one which also facilitates the remedy of one who sustains a loss, by localizing the responsible carrier.* Neither does the regulation impose an unreasonable burden upon the receiving carrier."

And similarly the language is repeated at page 205:

"Reduced to the final results, the Congress has said that a receiving carrier, in spite of any stipulation to the contrary, shall be deemed when it receives property in one State to be transported to a point in another involving the use of a connecting carrier for some part of the way, to have adopted such other carrier as its agent, and to incur carrier liability throughout the entire route."

And finally, on page 206:

"The liability of the receiving carrier which results in such a case is that of a principal for the negligence of his own agents. In substance Congress has said to such carriers, 'if you receive articles for transportation from a point in one State to a place in another,

beyond your own terminal, you must do so under a contract to transport to the place designated. *If you are obliged to use the services of independent carriers in the continuance of the transit, you must use them as your own agents and not as agents of the shipper.*"

In fact likewise it has been held by this Court in a late case, to wit, *Galveston Harrisburg & San Antonio Railway Company vs. Wallace*, and same *vs. Crow*, 223 U. S., 481, decided February 19th, 1912, wherein Mr. Justice Lamar, on delivering the opinion of the Court, says:

"Under the Carmack Amendment as already construed in the *Riverside Mills* case, where the carrier voluntarily accepts goods for shipment to a point on another line in another state, it is conclusively treated as having made a through contract. It thereby elected to treat the connecting carriers as its agents for all purposes of transportation and delivery. *This case then must be treated as though the point of destination was on its own line and is to be governed by the same rules of pleading, practice and presumption as would have applied if the shipment had been between stations in different states, but both on the Company's railroad.*"

No matter how the proposition is viewed whether, as expressed in the *Atlantic Coast line* case, *supra*, that the initial carrier operates through a chain of connecting agents to the point of destination and to the delivery in the hands of the consignee, or whether the fiction exists as described in the *Galveston Harrisburg & San Antonio Railroad Company vs. Wallace*, *supra*, that the entire route from the point of origin to the point of destination is operated by the initial carrier in the same manner as if the shipment had been between stations in different states, on the initial carrier's rail-

road, the fact nevertheless remains that we still have the same result, viz; that it is the initial carrier which is delivering the goods to the consignee at the point of delivery and which is liable to the consignee for failure to deliver the same in proper condition according to the terms of the bill of lading. Surely there could be no question but that the initial carrier would be considered as doing business in the City of New York, if it made the delivery itself, of the shipment in that City!

At what point does the Court intend to amputate this theory of agency? If the theory is to be followed to its logical and only conclusion, it is respectfully submitted that the Court having heretofore applied the doctrine of agency to the terminal carrier, then it must in like manner find that such terminal carrier is the agent of the initial carrier for the delivery of the goods to the consignee and hence the initial carrier is operating and doing business within the jurisdiction where the delivery is made, otherwise the Court will be compelled to say that such agency ends abruptly and is not to be carried to its logical and only conclusion.

This tribunal has heretofore decided that the terminal carrier is the agent of the initial carrier for the very purposes for which the said initial carrier was incorporated, to wit, transportation and delivery of freight, and in line with the above decisions it would seem that this Court must hold that the initial carrier is for that reason doing that particular business in the jurisdiction of the terminal carrier. Hence it is amenable to the service as made in the case at bar, to wit, by serving a director thereof residing in the State of New York.

Our learned opponents have laid great stress upon the fact that if the Supreme Court of the

United States sustains the ruling of the lower Court, much distress will result to the railroads. In this contention we are not interested, as the defendant in error regards the proposition submitted on this appeal to be one purely of law, and the sustaining of the service made herein to be absolutely inevitable because of the reasoning which the Court has heretofore applied in all of its adjudications under the Carmack Amendment to the Hepburn Act.

It is further submitted that relief is duly afforded to the railroads in the same statute because therein it is provided that the initial carrier may in turn recover from its connecting agent, such damages as it may have been called upon to pay to the consignee and which are chargeable to the negligence of a connecting carrier.

In conclusion, the defendant in error respectfully asks the Court to bear in mind that he is making no contention, as alleged in opponent's brief, that service upon the terminal carrier would have been good service upon the defendant in this action, but on the contrary, the sole point is whether the service in this particular case, made upon a resident director in New York of the plaintiff in error, is valid; and it is furthermore respectfully submitted that service in this action may be sustained by the decision of Mr. Justice Peckham in the Pennsylvania Lumbermen's Insurance Company case cited, *supra*, under Point I upon the peculiar state of facts therein and in the case at bar, should the Court not desire to base its decision upon the Carmack Amendment to the Hepburn Act.

It is also contended by the defendant in error that recourse to the record will afford the Court ample opportunity to sustain the service made herein, upon the question of fact that the plaintiff in error *was actually engaged in doing business*

within the state. Respondent has purposely omitted devoting any lengthy argument to this contention, believing as he does, that the two questions of law were sufficient. For fear, however, that the Court may deem that the respondent has no great faith in this aspect of the appeal, the attention of the Court is respectfully directed to the record wherein it is shown that the plaintiff in error is owned, operated and controlled by the St. Louis Southwestern Railway Company of Missouri which, it is admitted, maintains its executive offices in New York City and is actually engaged in doing business therein, and which, it is further admitted, controls the administrative policy of the plaintiff in error through the executive meetings of the Missouri corporation held in the City of New York, and that certain officers of the said Missouri corporation, as shown by the record, serve in similar capacities with the plaintiff in error.

Furthermore all of the negotiations with reference to this claim prior to the litigation and looking towards the adjustment of the same were carried on with Mr. P. H. Coombs, who is the agent of the plaintiff in error for that purpose, of 290 Broadway, in the City of New York, and that Mr. Coombs is the general freight agent located in the City of New York and operating there for both the Missouri corporation and the plaintiff in error, commonly known as "The Cotton Belt Route, St. Louis Southwestern Lines." Further certain of the representatives of the plaintiff in error, such as the Registrar of the capital stock, and trustee, transfer agent and registrar of certain mortgages have their offices in the City of New York.

It has already been noted in the statement of fact in this brief that the plaintiff in error was

incorporated in Texas by reason of the requirements of the laws of that state, and that while technically there is a difference in the entities of the Missouri corporation and the plaintiff in error, as a matter of fact the two said Companies are different in name only, and that difference being solely to conform to the letter of the law of Texas, there being no real distinction between them.

This, in the opinion of the respondent, is sufficient evidence of the plaintiff in error being engaged in business within the State of New York, to sustain the service upon the question of fact alone without resorting to the points of law involved.

Having shown herein that by reason of the peculiar facts of this case on appeal, it is within the purview of the decision of the Pennsylvania Lumbermen's Insurance case, and having further shown that under the Carmack Amendment to the Hepburn Act that the plaintiff in error was engaged in doing business within the state, as well as having pointed out that under the facts within the record, the defendant is actually operating within the State of New York, it is respectfully submitted that the services of process in the case at bar was valid, and that

POINT III.

The judgment of the District Court should be affirmed.

Dated, New York, December 2nd, 1912.

Respectfully submitted,

PHELAN BEALE,

Counsel for Defendant in Error.

No. 2 Wall Street,
New York City.